

# E-News & Views

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July, 2014  
to  
June, 2015

## A Publication of KTBA

A publication covering information on recent important judicial pronouncements, circulars and clarifications

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<b>E-News &amp; Views Committee</b> Arshad Siraj Zubair Abdul Sattar Mesia Syed Hassaan Naeem Yasmeen Ajani Muhammad Raza		

Dear Members,

It gives me immense pleasure in sharing my thoughts with you on the efforts we have so far made in the interest of the Bar, its members and the profession. You would appreciate that we are highlighting core issues to the FBR and are taking all steps for resolution of the same. In order to acquaint our members with the knowledge of tax laws and other important subjects, CEP programs on different topics have also being held. Following the tradition, we have also launched Professional Development Program (PDP) which is in its culmination stage. Currently we are holding Advanced PDP Program which is designed for professionals in practice, which is the first ever such program held by the Bar. With your continued support, we are hopeful that we will perform to the best of our abilities.

I would like to congratulate the entire team of E-news & Views and the convener in particular, for giving their time and preparing this issue of Enews & Views and hope that you will be having this publication on regular intervals. I wish all success to the team.

Looking forward working with you.

Yours in service,

Mohammad Zubair

Dear Fellow Members,

I feel honored in presenting this issue of News & Views for the respected members of this august Bar.

We have compiled in this issue Circulars, Notifications, General Orders etc. concerning revenue laws of the country issued till June 2015. In addition, important case law dealing with Sales-tax, Customs, Federal Excise and Direct tax are also part of this publication.

I am sure that this issue would provide you information and knowledge that is required for dealing with the issues that we come across in our professional duties.

We welcome your suggestions and comments which indeed help us in our pursuit of improving the readership as well as quality of this publication.

Before leaving, I would like to thank E-News & Views Committee members of for their valuable input, continued efforts and support.

Yours in service,

Arshad Siraj Memon

**Note:** Members are advised to read complete Circulars and SROs/ Notifications for better understanding of respective issues

## SECP – CORPORATE

CIRCULAR/ NOTIFICATION/ SRO REFERENCE	SUBJECT
SRO 593(I)/2014 Dated: June 30, 2014	SECP vide this notification directed all Companies, including public, private and Not-for-Profit licensed under section 42 of the Companies Ordinance, 1984; Trade Bodies and Single Member Companies having paid-up-capital of Rs.50 million or above to mandatory file all documents, returns, accounts and applications through eService effective from 01 <sup>st</sup> September, 2014
SRO 633(I)/2014 Dated: July 10, 2014	Vide this notification, SECP notified International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) which are to be followed for the preparation of balance sheet and profit and loss account or income and expenditure account of listed companies and such other classes of companies that are required by the Companies Ordinance, 1984
SRO 634(I)/2014 Dated: August 11, 2014	SECP vide this notification directed that every public listed company and public unlisted company shall maintain a functional website with effect from August 30, 2014 for which minimum requirement has also been specified. However, all other companies are encouraged to maintain their functional website
SRO 685(I)/2014 Dated: July 22, 2014	Vide this notification, SECP has made amendments in the Sixth Schedule to the Companies Ordinance, 1984 for payment of fee for registration of increase in share capital
SRO 787(I)/2014 Dated: September, 08, 2014	Vide this notification, SECP has allowed companies to circulate annual balance sheet and profit and loss account, auditor's report and directors report, etc., (Audited Financial Statements) along with notice of annual general meeting to its members through e-mail subject to compliance with the conditions outlined in the notification
SRO 823(I)/2014 Dated: September, 16, 2014	Vide this notification, draft of Rule 7A in the Securities & Exchange Commission (Insurance) Rules, 2002 regarding 'Annual Supervision Fee' to be paid by an insurer in terms of clause (c) of sub-section (3) of section 11 of the Insurance Ordinance, 2000, has been issued for public opinion
SRO 1027(I)/2014 Dated: November 13, 2014	Vide this notification, SECP made certain amendments in the First Schedule to the Companies Ordinance, 1984 in Tables "A", "B" and "C" for insertion of certain clauses in the Memorandum and Articles of Association of Company
SRO 1083(I)/2014 Dated: December 02, 2014	Vide this notification, Companies (Easy Exit) Regulations, 2014 are issued for Private and Public Limited Companies, including Associations and Not-for-Profit Companies licensed under section 42 of the Companies Ordinance, 1984, which are not carrying on business and are not in operation and desirous to strike their names off the register of companies in terms of section 439 on compliance of stipulated formalities

CIRCULAR/ NOTIFICATION/ SRO REFERENCE	SUBJECT
SRO 1136(I)/2014 Dated: December 19, 2014	Vide this notification, SECP Chairman has delegated additional work to the Commissioners, in addition to any other work assigned to them from time to time, be responsible for overseeing the work of Divisions/ Departments of the SECP
SRO 32(I)/2015 Dated: January 14, 2015	Vide this notification, SECP has reconstituted the Appellate Benches
SRO 52(I)/2015 Dated: January 22, 2015	SECP vide this notification extended the compliance of the Synthetic and Rayon Companies (Cost Accounting Records) Order, 2012 until further orders
SRO 112(I)/2015 Dated: February 06, 2015	Vide this notification, SECP notified "Issue of Sukuk Regulations, 2015" which have come into force at once
SRO 113(I)/2015 Dated: February 06, 2015	Vide this notification, SECP under powers vested in Regulation 4(1)(c) of the SECP (Conduct of Business) Regulations, 2000 and in suppression of earlier notification decided that Commissioner shall, in addition to any other work assigned to them from time to time, be responsible for overseeing the specified work of Divisions/ Departments of the SECP
SRO ____ (I)/2015 Dated: February , 2015	Vide this notification, SECP has proposed issue of Draft of "Private Funds Regulations, 2015" for public opinion
SRO ____ (I)/2015 Dated: February , 2015	Vide this notification, SECP has proposed issue of Draft "Real Estate Investment Trust Regulations, 2015" for public opinion
SRO ____ (I)/2015 Dated: February , 2015	Vide this notification, SECP has proposed issue of Draft "Book Binding Regulations 2015" for public opinion
SRO 120(I)/2015 Dated: February 10, 2015	Vide this notification, SECP has issued draft of certain amendments proposed in the Single Member Companies Rules, 2003
SRO 154(I)/2015 Dated: February 19, 2015	Specification of Powers and Functions of the SECP delegated to the Commissioner (Company Law Division) for hearing of appeals; granting license under section 42 to Associations Not-for-Profit
SRO 221(I)/2015 Dated: March 11, 2015	Delegation of Powers and Functions to various Commissioners and Officers
SRO 223(I)/2015 Dated: March 11, 2015	New Form of Circular prescribed under Section 86(3) of the Companies Ordinance, 1984 to be sent to the members along with the notice offering new shares
SRO 225(I)/2015 Dated: March 13, 2015	Vide this notification, draft of Rule 9 proposed to be inserted in the SECP Insurance Rules, 2002 in respect of 'Minimum paid-up capital requirement for insurers' for soliciting comments of the general public

CIRCULAR/ NOTIFICATION/ SRO REFERENCE	SUBJECT
SRO 270 (I)/2015 Dated: April 02, 2015	Additional specified responsibility assigned to Commissioners to oversee the work of Divisions/ Departments of SECP in addition to their already assigned work
SRO 291(I)/2015 Dated: April 08, 2015	In suppression of SRO 270(I)/2015, revised additional responsibilities assigned to Commissioners to oversee the work of Divisions/ Departments of SECP in addition to their already assigned work
SRO 333(I)/2015 Dated: April 20, 2015	Amendments in Insurance Rules, 2002 made in regard to power of the SECP to issue directives; procedure to be followed by SECP while issuing directives; etc.
SRO 343(I)/2015 Dated: April 22, 2015	Vide this notification, "Unit Linked Products and Fund Rules, 2015" issued
SRO 427(I)/2015 Dated: May 20, 2015	Certain further amendments made in Non-Banking Finance Companies and Notified Entities Regulations, 2008 in regard to distribution of realized capital gain in case of Closed End Fund
SRO 565(I)/2015 Dated: June 08, 2015	Vide this notification draft of proposed amendments in Non-banking Finance Companies (Establishment and Regulation) Rules, 2003 issued
Circular No.15/2014 Dated: June 24, 2014	In order to avoid the negative repercussions of non-compliance with the provisions of 'The Foreign Account Tax Compliance Act (FATCA) of United States, all insurers to whom the FATCA is applicable, in their own interest, are advised to get registered with the Internal Revenue Service (IRS) after determining their legal status according to the provisions of FATCA latest by June 30, 2014 so that they may be listed as Participating Foreign Financial Institution (PFFI) in the issuance by IRS on July 01, 2014
Circular No.16/2014 Dated: July 03, 2014	Detail requirements specified by the SECP for compliance by Asset Management Companies to advertise Open-End Collective Investment Schemes (CIS)
Circular No.17/2014 Dated: August 07, 2014	Criteria specified for appointment of Cost Auditors by the Companies for bringing uniformity and transparency in appointment
Circular No.18/2014 Dated: August 18, 2014	In continuation of Circular 15 of 2010 dated July 06, 2012 regarding Related Party Transactions for Insurance Companies clarified and advised to ensure compliance with the requirement of the provision of Section 32(2)(g) of the Insurance Ordinance, 2000, by December 31, 2014
Circular No.19/2014 Dated: October 24, 2014	Directives for correct deduction of withholding tax under section 150 of the Income Tax Ordinance, 2001 on dividend as amended by the Finance Act, 2014 distinguishing between 'Filers of Income Tax Returns @ 10%' and 'Non-Filers of Income Tax Returns @ 15%'.

CIRCULAR/ NOTIFICATION/ SRO REFERENCE	SUBJECT
Circular No.20/2014 Dated: December 22, 2014	Directive for deposit of Annual Supervision Fee for the year 2015 as per the 'Condition imposed on Registered Insurers' vide sub-section (3) of section 11 of the Insurance Ordinance, 2000 on or before January 15, 2015 and to submit the challan along with the figures of direct gross written premiums reconciled from the Audited Annual Accounts for the year ended December 31, 2013
Circular No.21/2014 Dated: December 30, 2014	In continuation of Circular No.18 of 2014 dated August 18, 2014 directing to ensure compliance of Section 32(2)(g) of the Insurance Ordinance, 2000 for Related Party Assets by December 31, 2014, however, in view of practical difficulties in its immediate implementations, the compliance date revised and is effective from July 01, 2015 on fulfillment of specified conditions
Circular No.1/2015 Dated: January 01, 2015	SECP notified that there should be no change in the three Growth Rates of Return of 7%, 9% and 11% assumptions to demonstrate projected benefits to potential policyholders by Life Insurance and Family Takaful Companies as specified for the year 2014 through Circular No.1/2014 dated January 07, 2014 in respect of year 2015 and onwards
Circular No.2/2015 Dated: January 01, 2015	Directive to all Associations Not-for-Profit set-up in pursuance of license granted under Section 42 of the Companies Ordinance, 1984 and registered with SECP and have completed five years' time from the issuance of license, to apply to the SECP for renewal of license within 30 days of issue of Circular failing which necessary legal action shall be initiated including revocation of license in terms of sub-section (4) of Section 42 of the Ordinance. SECP also issued Guidelines specifying requirements of documents to be filed with the application for renewal
Circular No.3/2015 Dated: January 26, 2015	In furtherance of Circular No.7 of 2009 dated March 06, 2009 on "Categorization of open-end Collective Investment Schemes", SECP substituted Clause 9(iii) of the said Circular specifying categories and extent of investments by CISs.
Circular No.4(I)/2015 Dated: January 30, 2015	In partial modification of earlier Circulars and latest Circular No.2/2015 dated January 01, 2015, SECP specified details of documents to be filed with the application to SECP by all registered Associations Not-for-Profit for renewal of license under section 42 of the Companies Ordinance, 1984 completed five years from the date of issue of License
Circular No.5/2015 Dated: January 30, 2015	SECP partially modified Circular No.4 of 2015 dated January 30, 2015 in regard to submission of documents with application for renewal of license and also extended last date for submission of application for renewal of license before SECP upto February 16, 2015
Circular No.6/2015 Dated: February 02, 2015	All insurers, who have underwritten Credit & Surety ship business during the year 2014, advised to submit soft and hard copies of information/ details regarding such business for analysis and study of Insurance Division of SECP
Circular No.7/2015 Dated: February 09, 2015	Based on updated SRO No.74(I)/2015 dated January 27, 2015 forwarded by the Ministry of Foreign Affairs, Islamabad, advising implementation of the sanction measures (funds freeze) in its jurisdiction against the individuals and entities placed on the UN Security Council, Al-Qaida and Taliban Sanctions Committees

CIRCULAR/ NOTIFICATION/ SRO REFERENCE	SUBJECT
	<p>Consolidated List, all Insurance Companies and Insurance Brokers directed to comply with the requirements of freezing of funds and deny business to such listed individuals, groups, undertakings and entities</p> <p>Further, the compliance of above SRO is also required to be reported by each insurance company and insurance broker to the SECP, mentioning the details of funds, financial assets and economic resources frozen and in case of no actions reported, the response in any case is to be submitted to the SECP by February 14, 2015</p>
Circular No.9/2015 Dated: April 08,2015	Mandatory Certification requirements specified for the Professionals working in Capital Market [Brokerage Houses (Brokers/ TREC holders) and for Registered Exchange, Depository and Clearing Company]
Circular No.10/2015 Dated: April 13,2015	Mandatory Certification requirements specified for the Professionals working with Insurers, including Takaful operators, in the designated functions
Circular No.11/2015 Dated: April 13, 2015	Mandatory Certification requirements specified for the Professionals of NBFCs, (For Leasing Companies and Investment Finance Companies and for Asset Management Companies, Pension Fund Managers and Investment Advisors)
Circular No.12/2015 Dated: April 17, 2015	Mandatory Certification requirement specified for the Professionals of Modaraba
Circular No.13/2015 Dated: April 24, 2015	Intimation of amendments made in Insurance Rules, 2002 through SRO 333(I)/2015 dated 20 April, 2015 entailing procedure to be followed under section 60 of the Insurance Ordinance, 2000
Circular No.14/2015 Dated: April 24, 2015	Intimation of issuance of the Unit Linked Product and Fund Rules, 2015 notified through SRO 343(I)/2015 dated 22 April, 2015
Circular No.15/2015 Dated: April 27,2015	Guidance issued on compliance of Government of Pakistan's Notifications issued under United Nations Security Council (UNSC) Resolution 1267 by all Banking and Non-Banking Finance Companies
Circular No.16/2015 Dated: May 06, 2015	Guidance issued on compliance of Government of Pakistan's Notifications issued under United Nations Security Council (UNSC) Resolution 1267 by all Modaraba Companies managing Modaraba under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980
Circular No.17/2015 Dated: May 08,2015	Guidance issued on compliance of Government of Pakistan's Notifications issued under United Nations Security Council (UNSC) Resolution 1267 by all Insurance Companies
Circular No.18/2015 Dated: May 15, 2015	Directions to all Asset Management Companies (AMCs) to comply with the specified requirements for Constant Proportion Portfolio Insurance (CPPI) based CISs

CIRCULAR/ NOTIFICATION/ SRO REFERENCE	SUBJECT
Circular No.20/2015 Dated: June 19,2015	Intimation of publication of draft of Small Dispute Resolution Committees (Constitution and Procedure) Rules, 2015 in SRO 545(I)/2015 dated June 03, 2015 as empowered under section 117 and 167(2) of the Insurance Ordinance, 2000
Circular No.21/2015 Dated: June 29, 2015	Directives to all Non-Banking Finance Companies to place the web-link of SECP investor education portal "Jamapunji" alongwith its logo at a prominent place on the homepage of their websites
Circular No.22/2015 Dated: June 29, 2015	Directives to all Modaraba Companies to place the web-link of SECP investor education portal "Jamapunji" alongwith its logo at a prominent place on the homepage of the websites of Modarabas being managed by them

## DIRECT TAX CIRCULARS AND SROs

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
S.R.O. 717(I)/2014 Dated: August 7, 2014	<p>It would be recalled that clause (72B) of Part IV of the Second Schedule to the Income Tax Ordinance, 2001 ("Ordinance") provides for exemption from payment of income tax at import stage to an industrial undertaking if the tax liability for the current tax year, on the basis of determined tax liability for any of the preceding two tax years, has been paid and a certificate to this effect is issued by the Commissioner Inland Revenue.</p> <p>Through the SRO, the FBR have specified the manner and conditions for issuance of exemption certificate by the Commissioner, exempting import of raw material from the provisions of section 148 of the Ordinance for an industrial undertaking. These are as follows:</p> <p><b>Conditions -</b></p> <ul style="list-style-type: none"> <li>• The material imported is to be used by the industrial undertaking as raw material for its own use;</li> <li>• Exact nature of raw material should be identified by mentioning the Pakistan Customs Tariff Code;</li> <li>• Quantity of raw material should be specified by units/ numbers or its weight;</li> <li>• The tax liability for the current year on the basis of determined tax liability for any preceding two years, whichever is higher, has been paid;</li> <li>• Quantity of material imported for exemption should not exceed 110% of the quantity imported and consumed in the previous year;</li> <li>• If raw material already imported before applying for exemption and tax under section 148 has already been paid then it will not be included in the said 110%;</li> </ul>



CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
	<ul style="list-style-type: none"> <li>• Tax year for which the exemption certificate is required should not be the first tax year of business;</li> <li>• Tax on taxable income has been paid for the preceding two tax years;</li> <li>• No arrears of income tax, sales tax or federal excise duty are outstanding; and</li> <li>• All income and sales tax returns along with withholding statements due to be filed under the law, have been filed.</li> </ul> <p><b>Manner</b></p> <ul style="list-style-type: none"> <li>• Taxpayer is required to file an application for an exemption certificate in the prescribed form in this SRO;</li> <li>• The Commissioner may conduct inspections of the manufacturing facility at any time.</li> <li>• Exemption certificate issued for six months only;</li> <li>• Commissioner is required to submit a report to the Chief Commissioner in every case that the requirement meted above have been fulfilled;</li> <li>• The Chief Commissioner has the power to inspect the exemption certificates from time to time and further furnish a half yearly report for the FBR; and</li> </ul> <p>The application form to acquire this exemption has been attached to this SRO.</p>
<p>S.R.O. 716(I)/2014 Dated: August 7, 2014</p>	<p>Through the SRO, the FBR has introduced Clause (56H) in Part IV of the Second Schedule to the Ordinance which provides that the provisions of section 148 will not apply on potatoes imported between 5 May 2014 – 15 November 2014. However, this provision is only applicable where the import of potatoes does not exceed 300,000 metric tons during the said period.</p>
<p>S.R.O. 765(I)/2014 Dated: August 26, 2014</p>	<p>The insertion of draft amendments of Rule 81B and 81C to the Income Tax Rules, 2002 (ITR) vide S.R.O. 699(I)/2014 dated 24 July 2014 has been enacted vide this SRO.</p>

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
<p>S.R.O. 817(I)/2014 Dated: September 15, 2014</p>	<p>Through the S.R.O., the FBR has finalized Rule 43A relating to advance tax on air tickets (which was proposed in S.R.O. 698(I)/2014 dated 24th July 2014) and its salient features are listed below:</p> <ul style="list-style-type: none"> <li>• Advance tax collected by the airlines at the rates applicable in section 236B and 236L of the Ordinance should be deposited by the 15th day of the following second month;</li> <li>• Tickets issued by persons other than the airlines are to collect tax on behalf of the airline and make payments to the airline in a manner specified;</li> <li>• Monthly and annual statements of tax collected shall be submitted by every airline to the respective Commissioner Inland Revenue, these forms are given in the SRO. The monthly statement in respect of the tax deposited should be filed by the 21st of that month; and</li> </ul> <p>Provisions of Section 236G (advance tax on sales to distributors dealers and wholesalers) and 236L shall not be applicable in case of a foreign diplomat or diplomatic mission in Pakistan [it appears that the said provision inadvertently makes reference to Section 236G when, in our view, it should have been Section 236B].</p>
<p>S.R.O. 819(I)/2014 Dated: September 16, 2014</p>	<p>Through the S.R.O., the FBR has finalized the income tax return forms, that were previously introduced as draft, by S.R.O. 618(I)/2014 dated 1 July 2014.</p>
<p>S.R.O. 1034 (1)2014 Dated: November 21, 2014</p>	<p>Vide this S.R.O., the FBR has exempted the levy of penalty and default surcharge for returns of income filed up to 5 December 2014. The exemption is subject to two conditions, namely:</p> <ul style="list-style-type: none"> <li>• Return is filed by 5 December 2014; and</li> </ul> <p>Tax due with return, in case of a company, has been paid by 30 September 2014</p>
<p>S.R.O. 30(I)/2015 Dated: January 14, 2015</p>	<p>Through the S.R.O., the FBR has notified 19 January 2015 as the date for collection of tax from non-filers, the tax is now to be collected at 2% at the time of registering or attesting transfer of immovable property, as per section 236K of the Ordinance. However, the above collection of tax is applicable where the value of immovable property is more than 3 million.</p> <p>For filers, the rate of tax under Section 236K of the Ordinance remains at 1%.</p>
<p>S.R.O. 136(I)/2015 Dated: February 13, 2015</p>	<p>Through the S.R.O., the FBR has introduced higher rates of withholding tax for non-filers who are importers under section 148 of the Ordinance and for service providers under section 153(1)(b) of the Ordinance.</p> <p>These include companies providing services, non-corporate service providers, importers of remeltable steel, potassic fertilizers, urea, pulses, manufacturers and commercial importers covered under S.R.O. 1125(I)/2011 dated 31 December 2011 and import of ships by ship breakers.</p>

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
S.R.O. 161(I)/2015 Dated: February 23, 2015	Through the S.R.O., the proposed draft amendments (vide S.R.O. 1021(I)/2014 dated 12 November 2014 ) to the Income Tax Rules, 2002 in the Eight Schedule to the Ordinance, has been enacted after making certain amendments in the draft rules.
S.R.O. 115(1)/2015 Dated: February 9,2015	Through this S.R.O. the FBR has granted powers and functions to Director Generals (Intelligence and Investigation), Inland Revenue in various jurisdictions.
S.R.O. 235(I)/2015 Dated: March 18, 2015	Through the S.R.O., the Federal Government (FG) has widened the scope of the exemption and now payment to a permanent establishment in Pakistan of a non-resident person on account of sale or supply of goods or providing or rendering of services during project construction and operations shall be exempt from withholding of tax under section 152(2A) of the Ordinance.
S.R.O. 248(I)/2015 Dated: March 27, 2015	<p>It would be recalled that Clause (132) of Part I of the Second Schedule to the Ordinance provides for exemption from tax in respect of profits and gains derived by taxpayer from an electric power generation project set up in Pakistan subject to the following general conditions:</p> <ul style="list-style-type: none"> <li>(a) owned and managed by a Company formed for operating the said project and registered under the Companies Ordinance, 1984 and having its registered office in Pakistan;</li> <li>(b) Not formed by splitting up, or the reconstruction of reconstitution, of a business already in existence or by transfer to a new business of any machinery or plant used in a business which was being carried on in Pakistan at any time before the commencement of the new business; and</li> <li>(c) owned by a Company 50% of whose shares are not held by the Federal Government or Provincial Government or local authority or which is not controlled by the Federal Government or Provincial Government or local authority.</li> </ul> <p>Through the S.R.O., the Federal Government has relaxed the condition of the split up projects, as captured in (b) above and now the exemption would also be available to such electric power projects that are formed by the splitting up, or the reconstruction or the reconstitution of an already existing electric power generation business provided that the already existing electric power generation business enjoyed exemption under Clause (132) of Part I of the Second Schedule to the Ordinance.</p>
S.R.O. 267(I)/2015 Dated: April 2, 2015	<p>Through the S.R.O., the FBR has finalized the draft amendments introduced vide S.R.O. 176(1)/2015, dated the 27 February 2015.</p> <p>The finalized rules further propose that for the financial year 2014-2015 the Active Taxpayers List shall be published and made available on the FBR web portal by 11th of April 2015 and for the financial year 2013-2014 the Active Taxpayers List shall be valid up till 10 April 2015.</p>

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
Circular 03/2014 Dated: August 06, 2014	Acceptance of evidence of filing of return for collecting tax under section 234 of the Ordinance where withholding agents do not have access to the active tax payer's list.
Circular 04/2014 Dated: August 28, 2014	Extension in the date of filing of Income Tax Returns/Statement for the Tax Year 2014 under section 214A of the Ordinance.
Circular 04/2014 Dated: September 26, 2014	Extension in the date of filing of Income Tax Returns/Statement for the Tax Year 2014 under section 214A of the Ordinance.
Circular 06/2014 Dated: October 31, 2014	Extension in the date of filing of Income Tax Returns/Statement for the Tax Year 2014 under section 214A of the Ordinance.
Circular 01/2015 Dated: February 18, 2015	Clarifications regarding amendments in the rates of WHT under section 148 and 153(1)(b) of the Ordinance brought through S.R.O. 136(I)/2015 dated 13 February 2015.
Circular 4(7) R&S/2015-40120-R Dated: March 19, 2015	Title and account No. of FBR maintained with Central Depository Company of Pakistan Limited.
Circular 1(43) DG (WHT)/2008-Vol.II-66417-R Dated: May 12, 2015	Requirement of valid tax exemption certificate for claim of exemption u/s 150, 151 and 233 of the Ordinance in the cases where statutory exemption under Clause (47B) of Part –IV of Second Schedule is available.

## SYNOPSIS OF IMPORTANT CASE LAWS

### SALES TAX, CUSTOMS AND FEDERAL EXCISE

CITATION	SECTION(S)	ISSUES INVOLVED
2014 PTD 1428 (Trib.)	S 2(12a) of the Federal excise Act, 2005;  Rule 43A of the Federal Excise Rules, 2005	In this case, agreements between Port Trust and Terminal Operating Companies were scrutinized by the Department and it was contended that agreements executed in the name of 'Implementation Agreements' were to be classified as 'Franchise Agreements'.  The Tribunal accepted the department's stance by holding that the agreement contained almost all the main features of 'franchise' as defined under section 2(12a) of the Federal Excise Act, 2005 and, therefore, royalty received by the Port Trust is franchise fee and was, thus, correctly subjected to Federal Excise Duty.

CITATION	SECTION(S)	ISSUES INVOLVED
2014 PTD 1495 (H.C.Pesh.)	S 7,8, 13,47,66 and 74 of the Sales Tax Act, 1990	<p>The primary question came for consideration before the Hon'ble High Court in this case was regarding the adjustment of input tax on import of Plant and Machinery (generator).</p> <p>The Petitioner had made payment of input tax at the time of clearance of the imported Generator and claimed the same in the monthly sales tax return. The assessing officer, however, refused to allow the adjustment of input tax under SRO 578(I)/98.</p> <p>It was held by the Court that the Generator being imported, installed and made to use in the manufacturing processes by the Petitioner fell outside the mischief of the excluding provision of SRO 578(I)/98 and the assessing officer was therefore directed to revisit the input tax adjustment disallowed.</p>
2014 PTD 1530 (H.C. Lah.)	S 6 and 73 of the Sales Tax Act, 1990 R 12(5) of the Sales Tax Rules, 2006	<p>In this case, the dispute related to the refund claimed by the Respondent which was withheld by the tax authorities (appellant) on the contention that the refund was claimed on invoices of blacklisted units which was in violation of sections 6 and 73 of the Sales Tax Act, 1990 read with Rule 12(5) of the Sales Tax Rules, 2006.</p> <p>The Hon'ble Court dismissed the department's appeal and held that blacklisting order was subsequent to the period for which refund was being claimed. Also the entities were not blacklisted units at the time of transaction.</p>
2014 PTD 1293 (Trib.)	S 30A of Sales Tax Act, 1990	<p>In this case, the grievance of the taxpayer was that the Directorate of Intelligence and Investigation had conducted audit proceedings without having lawful jurisdiction.</p> <p>The Appellant taxpayer contended that Constitution of Directorate must have been notified through the official Gazette by the Federal Board of Revenue which was a pre-requisite condition under section 30A of the Sales Tax Act, 2006. Mere assumption of the jurisdiction by the Directorate was contended to be illegal.</p> <p>Relying on the judgments of Hon'ble High Court and Appellate Tribunal Inland Revenue, the matter was decided in the favour of the appellant taxpayer.</p> <p>It was further contended that the audit could only be conducted in the light of provisions of section 25(3) of the Sales Tax Act, 2005 read with General Order No.3 of 2004 whereby a registered person has to be informed about the audit and details of record to be audited at least 15 days before the scheduled date of audit. In this case, officers of the Directorate had not issued any notice to the appellant while asserting that they were authorised in this behalf under Article 117 of the Qanun-e-Shahadat Order, 1984.</p> <p>The Tribunal agreed with the appellant's submissions and relying on the judgments of Apex Court held that the show cause notice issued were null and void. The orders passed by the authorities below were quashed.</p>
2014 PTD 1472 (H.C.Lah.)	S 30, 31 & 47 of the Sales Tax Act, 2005	<p>In this case, the jurisdiction of the appellant to file reference application was confronted.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
(2014) 109 Tax 233 (H.C.Lah.)		<p>The Commissioner filed reference on January 28, 2013. However, after issuance of notification dated January 11, 2013 the Commissioner had relinquished charge of the post of Commissioner Inland Revenue (Zone-II), Large Taxpayers' Unit Karachi and assumed the post of Chief Commissioner Inland Revenue (OPS) Regional Tax Office, Lahore w.e.f. January 4, 2013.</p> <p>The Hon'ble Court agreed that the reference has been filed by the unauthorized person since Commissioners has jurisdiction over specified areas, persons or class or persons.</p>
2014 PTD 1506 (H.C.Lah.)	S 37A,37B, 37C and 38 of the Sales Tax Act, 1990	<p>In this case, the Department initiated audit proceedings under section 38 of the Sales Tax Act, 1990 against the appellant and also initiated separate proceedings under sections 37A, 37B &amp; 37C of the Sales Tax Act, 1990.</p> <p>The department took coercive measures during the investigative audit and registered FIR against the appellant without having completed the audit. Moreover, the sales tax liability was determined on 'prima facie' basis.</p> <p>The Hon'ble court directed the Department to first complete the investigative audit and adjudge the liability accordingly</p>
2014 PTD 1698 (Trib.) (2014) 110 TAX 65	S 3,6,7,11(6), 22,23 & 26 of the Sales Tax Act, 1990 Sections 8, 14(1) & 19(1) of the Federal Excise Act, 2005,	<p>In this case, the appellant-registered person failed to pay the sales tax and file monthly returns within the due time. The tax was , however, subsequently deposited alongwith default surcharge and penalty and returns were filed belatedly after issuance of show cause notice</p> <p>The appeal filed by the appellant was rejected at both the appellate forums.</p>
2014 PTD 1414 (Trib.)	S 81(4) of the Customs Act, 1969	<p>In this case, the appellant has challenged the legality of final assessment order which was issued after the lapse of eight years.</p> <p>The impugned orders were set-aside being time barred.</p>
2014 PTD 1332	S 171 of the Customs Act, 1969	<p>In this case, Petition was filed by the owner of imported goods (black and white pepper) which were seized by the Intelligence Officer on the contention that the goods were smuggled.</p> <p>It was observed by the Hon'ble High Court that the petitioner should have contested the show cause notice and had rebutted the allegations levelled therein with all available documentary evidence. In case, the submissions were not accepted, the petitioner had adequate remedy to challenge the order before forum of Collector of Customs but the same had not been availed.</p> <p>The Hon'ble High Court, therefore, declined to interfere in the matter being the petition beyond its ambit</p>

CITATION	SECTION(S)	ISSUES INVOLVED
2014 PTD 1677 (Trib.)	S 26, 211 & 156 of the Customs Act, 1969	<p>In this case, goods imported by appellant were seized by the Customs authorities alleging that the goods were unlawfully imported on the premise that the appellant did not maintain record of its import transactions as required under section 26 and 211 of the customs Act, 1969.</p> <p>The appellant had sufficient documentary evidence to substantiate its claim. The import documents duly tallied with the imported goods.</p> <p>It was held that the non-maintenance of record does not invalidate the status of imported goods as unlawfully imported. It was further held that no penalty could be imposed which had not arisen out of the contents of the show cause notice.</p>
2014 PTD 1709	S 19-A & 81 of the Customs Act, 1969	<p>In this case, the appellant has filed review application before Federal Tax Ombudsman (FTO) on the issue of encashment of its security by the authorities after treating provisional assessment of goods as final.</p> <p>The FTO rejected the review application being the encashment of security was made on expiry of period under section 81(2) of the Act, was not in violation of law. It was also observed that the review application so filed was hit by the time limitation.</p>
2014 PTD 1717	S 3,6,11, 26,33,33 & 54 of the Sales Tax Act, 1990	<p>In this case, the appellant was issued a show cause notice under section 11 (without mentioning sub section) for the alleged non-filing of sales tax return. The appellant was enrolled as a Retailer under 'Sales Tax Special Procedure Rules' but was also compulsory registered and allotted STRN.</p> <p>The Hon'ble Tribunal observed that taxation officer has not followed proper procedure regarding compulsory registration as he was required to first cancel the registration of the appellant, therefore, appellant stands registered as 'Retailer'.</p> <p>It was also contested that subsequent to the assessment order, amounts of default surcharge and penalty were enhanced vide corrigendum without giving opportunity of being heard under section 57 of the Sales Tax Act, 1990.</p> <p>In this respect, the Hon'ble Tribunal observed that rectification of mistakes in the order made without issuance of prior notice under section 57 of the Sales Tax Act, 1990 was illegal and, therefore, directed the taxation officer to recalculate default surcharge after providing opportunity of being heard positively. It was further held that proper subsections be reflected in the show cause notice.</p>
2014 PTD 1833	S 138 of the Customs Act, 1969	<p>In this case, the petition was filed on the issue of re-export of consignment which had mistakenly arrived in Pakistan. The consignment was called 'Frustrated Cargo' and the Customs authorities also allowed its re-export and passed an order in this regard.</p> <p>The contention of the petitioner was that after having passed the order, the authorities detained the consignment and were not allowing to re-export while contending that the petitioner has obtained the order by misrepresentation.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
		<p>The Hon'ble court relying on the facts of the case held that the order passed by the Collector was valid and in field and directed the customs authorities to act upon such order.</p>
2014 PTD 1899	Section 32(3) of the Customs Act, 1969	<p>In this case, the order was passed by the Customs authorities without issuance of statutory show cause notice which is a pre requisite.</p> <p>The Hon'ble Tribunal held that the adjudicating authority cannot finalise the assessment and issue demand notice without having issued statutory show cause notice enabling the person to know the charges leveled and rebut the same.</p>
2014 PTD 1915	Section 196 of the Custom Act, 1969	<p>The reference application was filed on three questions of law which in the view of Hon'ble High Court did not arise from the impugned order of the Tribunal, nor it has been pleaded and argued before any of the forums before. The Hon'ble High Court relying on the judgment of Hon'ble Supreme Court dismissed the applications.</p>
2014 PTD 1919 (2014) 110 TAX 78 (H.C.Lah.)	Sections 207 & 209 of the Custom Act, 1969 Finance Act, 1999	<p>In this case, the petitioner- a customs clearing agent was given extended benefit by custom authorities. The department itself extended benefit of amendment in law before it was applicable.</p> <p>It was held by the Court that no wilful act or negligence has been on record on part of petitioner. Further, in terms of section 209, if duty is not levied or short levied or erroneously refunded on account of any reason other than default of agent, such duty cannot be recovered from him. Therefore, any coercive measures taken for recovery are illegal and without lawful authority.</p>
2014 PTD 1963 (H.C.Sindh)	Section 202 & 217 of the Customs Act, 1969  Section 148(1)(5) of the Income Tax Ordinance, 2001	<p>In this case, the petitioner has imported raw materials for manufacturing of edible oils and had obtained 'Reduced Rate Certificate' from Commissioner according to which imported goods were liable to be assessed at 3%. The custom authorities restricted the release of consignment contending that the goods are liable to be assessed at 5% instead of reduced rate.</p> <p>The Hon'ble High Court held that customs authorities are merely 'collecting agents' acting on behalf of Inland Revenue Department for collection of advance tax at prescribed and applicable rate. The 'Commissioner Inland Revenue' is the only competent authority for determination of correct amount of tax. Hence, the act of holding the consignment of appellant is mala-fide and without lawful authority.</p>
2014 PTD 2014	Section 194 of the Customs Act, 1969	<p>The petition was filed by the Collector of Customs against Chairman, Customs Appellate Tribunal. The Chairman had constituted a bench and included Member (Technical) from Karachi. The petitioner raised the contention that Member (Technical) should have been selected from the nearest tribunal i.e Peshawar and not from Karachi.</p> <p>The claim of petitioner was found illegal on the basis that parties to judicial proceedings cannot claim hearing by members of their choice.</p>



CITATION	SECTION(S)	ISSUES INVOLVED
2014 PTD 2053 (Supreme Court of Pakistan)	Section 19 and 31A of the Customs Act, 1969	In this petition, The Hon'ble Supreme Court adjudicated that for the purpose of determination of customs duty, the date of import should be taken into consideration rather than the date on which Letter of Credit is established. It was further held that the benefits of S.R.O could not be claimed after its expiry.
2014 PTD 2056 (Customs Appellate Tribunal)	Sections 25, 80, 81, 155-Q, 193, 194A & 215 of the Customs Act, 1969	In this case, the goods imported by the appellant were first provisionally assessed at the time of clearance. Subsequently, the customs authorities transmitted view message to pay additional tax. The appellant took the matter before first appellate authority who rejected the appeal whereby the Hon'ble Tribunal held that view message cannot be considered as final assessment order and first appellate authority should not have registered the appeal, hence, the appellate orders so passed were set-aside.
2014 PTD 2066	Sections 2(14) & 21 (2) of the Sales Tax Act, 1990	<p>In this case, the appellant was accused of tax fraud. It was alleged that appellant had claimed inadmissible input tax against invoices of blacklisted/suspended suppliers and that goods were never transferred physically.</p> <p>A contention was raised that the show cause notice was required to be issued within seven days of the order of suspension but the same was issued beyond the prescribed period. Further, the order of blacklisting should have been passed within ninety days of the issuance of show cause notice but again it was issued beyond the time limit of ninety days. As far as adjustment of input tax was concerned, all the suppliers were operative at the time the purchases were made. The submissions of the appellant were accepted.</p>
2014 PTD 2073 (H.C.Sindh)	Section 179(3) of the Customs Act 1969	<p>In this case, the petition was filed by 64 importers who assailed the hearing notices on the plea that the cases were to be finalized within 120 days after the issuance of show cause notice.</p> <p>The Hon'ble High Court dismissed the petition on the ground that it has been filed authorization on behalf of large number of petitioners without issuance of affidavit, power of attorney, authority letter neither they have signed or sworn this petition.</p>
2014 PTD 2135 (H.C.Lah.)	Sections 26 & 196 of the Customs Act, 1969	<p>The reference application was filed against the order issued by the Custom Appellate Tribunal who passed ex-parte order without hearing the petitioner.</p> <p>The appeal before the Customs Appellate Tribunal was filed by the Department. The petitioner was not served hearing notice and Tribunal set-aside the order in original.</p> <p>The Hon'ble Court held that the Appellate Tribunal did not ensure process of serving has been completed and acted with undue haste in deciding the appeal and that it failed to examine the documents and evidences before setting aside the order. All the questions of petitioner were answered favorably.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
2014 PTD 2140 (H.C.Sindh)	Sections 19, 32,156 & 192 of the Customs Act, 1969	<p>The issue related to the clearance of commercial consignment under the disguise of gifts and donations to charitable and non-profit organizations.</p> <p>It was found that the petitioner who was held accused of the crime was innocent and falsely implicated in the proceedings and he was neither importer of the alleged consignment nor he had any connection with the consignee non-profit organization. The Court quashed the proceedings against the petitioner.</p>
2014 PTD 2144	Sections 2(37) & 21(2) of the Sales Tax Act, 1990	<p>The issue related to the blacklisting/suspension of the registered persons. It was held that suspension orders were issued on the basis of mere presumptions and without any documentary evidence. Further neither show cause notice nor blacklisting order was issued within the prescribed time limit.</p>
(2014) 110 TAX 17 (H.C.Kar.)	Section 2(bb),14, 14A, 25(15), 26, 32, 32A, 131(1)(c) & 156(1) of the Customs Act, 1969	<p>The petition was filed by the exporter upon detention of the goods being exported. The petitioner had filed goods declaration electronically and goods covered therein were duly examined and assessed by the customs authority. Subsequently, container carrying goods to be exported was detained for re-assessment of custom value even when goods were duty free.</p> <p>The customs authority contended that the goods were valued on lower side and only notices were issued to the petitioner.</p> <p>The Hon'ble Court held that customs authority has jurisdiction and authority to satisfy themselves to the correctness of assessment however no penal action can be initiated. The notices so issued were set-aside.</p>
(2014) 110 TAX 18 (Trib.)	Sections 8,14 & 19(1) of the Federal Excise Act, 2005	<p>In this case, the appellant was charged with non-payment of Federal Excise Duty on franchise services being executed under a tripartite agreement (agreement entered into by three parties). The officer levied federal excise duty alongwith default surcharge and penalty.</p> <p>The action of the officer was found in conformity with the provision of law at both appellate forums.</p>
(2014) 110 TAX 70 (H.C.Kar.)	Section 217(2) of the Customs Act, 1969	<p>In this case, the plaintiff had filed suit for damages on account of losses sustained during the course of business and litigation as well as future loss of losing the clients etc.</p> <p>In response, defendants preferred application contending that suit is barred by section 217(2) of the Customs Act, 1969.</p> <p>The Hon'ble court dismissed the application and held that the bar contained in provision of above mentioned sub-section does not include rights of party to claim damages on account of any losses.</p>
(2014) 110 TAX 88 (H.C.Kar.)	Sections 32, 32A & 196 of the Customs Act, 1969	<p>The petitioner had imported energy equipment in parts/separately from different suppliers in China and besides filing of Goods Declaration sought exemption from custom duties under S.No.35-A of the SRO 575(I)/2006. The authorities were reluctant to allow the exemption being goods were imported separately and all items so imported were not covered under single umbrella.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
		The Hon'ble Court allowed the petition and all questions of petitioner were answered in affirmative.
(2014) 110 TAX 101 (H.C.Kar.)	Section 81 of the Customs Act, 1969	<p>Through reference applications, the questions regarding finality of provisional assessment within stipulated time of six months and refund of post-dated cheques deposited at the time of provisional assessment have been raised.</p> <p>In this case, the consignment of petitioner was released after making provisional assessment and submission of postdated cheques. Such a provisional assessment was required to be finalized within six months. The custom authorities issued show cause notice after a year and thereafter issued the order-in-original whereby short paid amount of duty was ordered to be recovered from the petitioner.</p> <p>The Hon'ble Court allowed the petition and held that since show cause notice and order were issued beyond the specified time limit of six month, the provisional assessment had attained finality. The customs authorities were therefore required to release the postdated cheques deposited at the time of provisional assessment.</p>
2014) 110 TAX 114 (H.C.Kar.)	Section 13(4) of the Customs Act, 1969	<p>In this case, the petitioner had obtained license to act as Custom Bonded Carrier which was issued on the recommendation of a Committee of Collectors of Customs and FBR. Later on, the authorities lodged FIR against petitioner alleging that the license has been obtained fraudulently. The authorities took coercive measure and seized the documents of the petitioner from its office and cancelled the registration of petitioner without any prior show cause notice.</p> <p>The Hon'ble Court directed the authorities to restore the license since the actions taken by the authorities are not in conformity with the provision of the Customs Act, 1969.</p>
(2014) 110 TAX 56 (Trib.)	Section 3, 13 & Clause 21 of the Sixth Schedule of the Sales Tax Act, 1990	<p>In this case, the appellant was a publisher and supplier of newspaper. The supply of newspaper was not subjected to sales tax owing to its exemption under clause 21 of the Sixth Schedule.</p> <p>However, the authorities imposed sales tax on supply of unused newspaper (returned from dealers) being waste, old and rejected papers fall outside the ambit of above mentioned clause.</p> <p>The Hon'ble Tribunal decided the appeal in favor of the appellant.</p>
(2014) 110 TAX 71 (Trib.)	Sections 2(14), 2 (37), 4, 7, 8, 8A, 10, 11, 22, 26,33, 34, 36(1) & 73 of the Sales Tax Act, 1990	<p>In this case, the appellant-department adjudicated that registered person has claimed inadmissible input tax against invoices of blacklisted suppliers and therefore amount of refund claimed is payable alongwith default surcharge and penalty.</p> <p>The registered person preferred an appeal before the CIR- Appeals which was decided in favor of registered person on the plea that status of supplier was operative at the time of business transaction.</p> <p>Before this appellate forum, registered person contended that the blacklisted supplier had challenged the order of blacklisting and the same was set-aside by Hon'ble Tribunal. Since the blacklisting order was set-aside, the same does not hold field anymore and recovery proceedings against such invoice is illegal and unjustified.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
		The Hon'ble Tribunal accepted the submission of registered person and rejected the appeal filed by the department.
(2014) 110 TAX 75 (Trib.)	Section 73 of the Sales Tax Act, 1990	<p>In this case, the department contended that the appellant-registered person has not made payments to suppliers from business bank account as required under section 73 of the Sales Tax Act, 1990 and, therefore, input tax adjustment claimed by the registered person in the sales tax return was inadmissible and liable to be recovered alongwith penalty.</p> <p>The Hon'ble tribunal decided the appeal in favor of the appellant on the basis that in section 73, the word "bank" was inserted through Finance Act, 2003 i.e after the period for which audit was conducted. Before amendment, it was "business account", hence adjudicating offices has erred in considering the business account as business bank account. The payments made by the registered person were found in conformity with the provisions of the Sales Tax Act, 1990.</p> <p>Further, it was observed that the order-in-original was not issued within 45 days of the issuance of show cause notice and, hence, the order was cancelled being time-barred.</p>
(2014) 110 TAX 85 (Trib.)	Section 180 of the Customs Act, 1969	<p>In this case, the appellant has challenged penalty order issued by the department contending that the department had not afforded the appellant reasonable time to submit his response and that the order is time barred.</p> <p>The Hon'ble Tribunal struck off the entire proceedings and held that orders passed by authorities below were without jurisdiction and against natural justice.</p>
(2014) 110 TAX 209 (H.C.Lah.)	Section 11, 11A of the Sales Tax Act, 1990	<p>In this case, the amount of sales tax paid through sales tax return submitted by the petition was re-assessed under section 11A of the Sales Tax Act, 1990. The department has compared the output tax declared with the invoices available on the petitioner's website.</p> <p>It was settled by the Court that section 11A could only be invoked if the amount of sales tax paid falls short than amount indicate in the return. The amount of tax indicated in the return will be considered correct and final. Perusal of any extraneous information used for the verification is not legal.</p> <p>In case, the department has dispute over amount of tax due indicate in the return, the department has to follow statutory procedure under section 11 of the Sales Tax Act, 1990.</p>
(2014) 110 TAX 241 (H.C.Lah.)	Section 3(1A) & 13 of the Sales Tax Act, 1990	<p>In this case, the petitioner who enjoyed tax exemption under section 13 of the Sales Tax Act, 1990 was charged with 'further tax' in terms of section 3(1A) of the Sales Tax Act, 1990.</p> <p>The Court held that further tax under section 3(1A) is imposed where a person who is liable to be registered under Sales Tax Act, 1990 fails to obtain registration number. Whereas a person who is not engaged in supply of taxable goods is not required to get registration number. Since petitioner is engaged in supply of exempt goods, he is not required to get registered therefore, section 3(1A) is not applicable in the instant case.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
(2014) 110 TAX 253 (H.C.Lah.)	Section 25D & 81 of the Customs Act, 1969	<p>In this case, the petitioners have challenged the non-release of consignment by the custom authorities under section 81 of the Customs Act, 1969.</p> <p>The Hon'ble Court held that where there is a dispute between importer and customs officer over assessment of value of imported goods, the importer has right to release the goods upon provisional assessment under section 81 of the Customs Act, 1969 and by way of security deposit.</p>
(2014) 110 TAX 125 (Trib.)	Sections 2(46), 2(26)(g), 2(41), 2(33), 3(1)(a), 13(2), 7, 8, 11, 33, 34 & 47 of the Sales Tax Act, 1990	<p>The petitions were Individual Power Producers (IPP) and engaged in production and supply of electricity to WAPDA. The dispute is regarding apportionment of input tax between 'taxable' and 'non-taxable' supply.</p> <p>According to Rule 13(3) of the Sales Tax Special Procedure Rules, 2007, the value of supply for IPP shall be the amount received on account of 'Energy Purchase Price' only and shall not include any excess amount received on account of 'Capacity Purchase Price' (CPP) etc.</p> <p>The sales tax is chargeable on EPP only whereas all other payments are not subject to sales tax, however IPPs are claiming entire input tax</p> <p>The exclusion of CPP does not tantamount to exemption from sales tax. Whereas the apportionment is required between exempt and taxable supplies under Rule 25 of the Sales Tax Rule, 2006 which in the opinion of Tribunal is not applicable in the instant matter.</p>
(2014) 110 TAX 359 (H.C.Lah.)	Sections 47 & 73 of the Sales Tax Act, 1990	<p>In this case, reference application has been filed department on the issue of admissibility of input tax where payments to suppliers were made through personal bank account contrary to the provision of section 73 of the Sales Tax Act, 1990.</p> <p>The Hon'ble Court held that one bank account is required to be registered with the Department. Merely that the bank account of registered person registered with the Department is not in name of business does not attract penal action.</p> <p>Further, a question was raised if commission, loading, unloading, carriage charges constitute part of 'value of supply' for determination of its tax liability.</p> <p>It was held that loading, unloading charges were not in furtherance of business but ancillary services. Therefore such charges are not subject to sales tax.</p>
(2014) 110 TAX 365 (H.C.Kar.)	Section 193A & 194B(1) & 196 of the Customs Act, 1969	<p>In this case, the reference application has been filed against order of Hon'ble Customs Appellate Tribunal wherein it was decided that customs authorities should pass separate order for each litigant analyzing their individual factual position rather than factual position of the case of another litigant and applying it 'mutatis mutandis'. The Tribunal had set-aside the orders and remanded the case back to adjudicating officer.</p> <p>The questions of law raised before this Court were found not arising from the impugned order of the Tribunal. It was held that where orders are held set-aside, the same does not hold field and no question of law arises. The reference application was dismissed and findings of the Tribunal were upheld.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
(2014) 110 TAX 371 (H.C. Kar.)	Section 168 of the Customs Act, 1969	<p>In this case, the goods imported by petitioner were detained by the customs authority. However, it was proposed by the customs authority that the case may be disposed-off with mutual consent of both the parties as such the respondents will withdraw the detention notice and release the confiscated goods and the petitioner will file goods declaration along with requisite documents which will be processed in accordance with the law and without causing any harassment.</p> <p>The petition was disposed of by consent of both the parties.</p>
(2014) 110 TAX 259 (Trib.)	<p>Sections 8(B), 11(2), 33, 34, 73 of the Sales Tax Act, 1990</p> <p>Sections 14(1) &amp; 19(1) of the Customs Act, 1969</p>	<p>In this case, Department has filed this appeal before Hon'ble Appellate Tribunal against the decision of CIR(A) on various issues such as violation of sections 8B and 73 of the Sales Tax Act, 1990, non-payment of extra tax on supply of electric appliances, inadmissible input tax on purchase of motor cycle, suppression of sales by taxpayer, late filing of monthly sales tax return and federal excise return and short payment of FED.</p> <p>The Hon'ble Tribunal vacated the order of CIR(A) while maintaining the order of assessing authority for recovery of special excise duty from taxpayer.</p>
(2014) 110 TAX 265 (Trib.)	Sections 3(1) & 14 of the Sales Tax Act, 1990	<p>In this case, the petitioner was the telecom operator and has been confronted by adjudicating authority on issue of non-payment of FED on interconnect services.</p> <p>The Hon'ble Tribunal decided the appeal in favor of the petitioner and vacated the orders of authorities below.</p>
(2014) 110 TAX 399 (H.C.Kar.)	Section 25 & 33 of the Sales Tax Act, 1990	<p>In this case, the common grievance of petitioners was that they have been accused of tax fraud and show cause notices were issued by National Accountability Bureau (NAB) under section 19 of the Nation Accountability Ordinance 1999 requiring certain documents/information in respect of sales tax.</p> <p>The petitioners contended that they are registered with FBR and their activities in respect of sales tax and income tax is being monitored by FBR. In given circumstances, notices issued by NAB were unwarranted and liable to be annulled.</p> <p>The Hon'ble Court held that the proceedings of NAB under aforementioned provision of law are against the fundamental rights of registered persons, therefore, notices so issued are suspended being coram non judge.</p>
(2014) 110 TAX 411 (H.C.Pesh.)	Rule 6(1) of the Federal Excise Duty and Sales Tax on Production Capacity (Aerated Water) Rules, 2013	<p>In this case, the petitioner has challenged the vires of amendment introduced through SRO 140(I)/2014 whereby input tax adjustment was restricted to 72% of the gross amount payable under the Federal Excise Duty and Sales Tax on Production Capacity (Aerated Water) Rules, 2013. It was also contended that Revenue Authorities are applying the effect of amendment retrospectively which is illegal and the same be declared as having prospective effect.</p> <p>The Hon'ble Court accepted the petition and held that amendment introduced in Rule 6(1) of the Federal Excise Duty and Sales Tax on Production Capacity (Aerated Water) Rules, 2013 is ultra-vires of the Sales Tax Act, 1990 and Federal Excise Act, 2005. It also held that enhanced</p>

CITATION	SECTION(S)	ISSUES INVOLVED
		rates provided in Rule 4 of the Federal Excise Duty and Sales Tax on Production Capacity (Aerated Water) Rules, 2013 will have prospective effect.
(2014) 110 TAX 313 (Trib.)	Section 57 of the Sales Tax Act, 1990	<p>In this case, the registered person filed miscellaneous application before the Appellate Tribunal Inland Revenue for review of appellate order framed by the same forum.</p> <p>The Hon'ble Tribunal held that application so filed is sort of 'review' and not rectification as applicant has prayed for rehearing which tantamount to reviewing/revisiting the appellate order which is beyond the scope of rectification and jurisdiction of this forum.</p>
(2014) 110 TAX 330 (Trib.)	Section 36(3) of the Sales Tax, 1990	<p>In this case, the registered person has challenged the order-in-original as the same was hit by the time limitation.</p> <p>It was contended that the order was supposed to be issued within 90 days of the issuance of show cause notice as required under section 36(3) of the Sales Tax, 1990.</p> <p>The Hon'ble Tribunal accepted the appeal and vacated the order being time barred.</p>
2015 PTD 1 (H.C.Lah.) 2015 PTD 462 (H.C.Sindh)	Ss 11, 11A & 48 of the Sales Tax Act, 1990	<p>In this case, several petitions were filed before Hon'ble High Court. The department had confronted petitioners for short paid amount of tax under section 11A contending that sales tax charged in the return has been incorrectly reflected.</p> <p>The Court held that section 11A can only be invoked upon short payment of 'tax due indicated in the return'. In the present case, the amount of tax due has been questioned for which statutory assessment is required under section 11. The case was decided in the favour of petitioners.</p>
2015 PTD 22 (H.C.Sindh.)	S 196 of the Customs Act, 1969	<p>The question of law came for consideration before the Hon'ble High Court in this case was regarding the application of Valuation Ruling to a pending proceedings.</p> <p>The respondent (importer) was contesting Valuation Ruling which was subsequently revised and benefit was given to importer by the Appellate Tribunal. The department raised the issue of applicability of valuation ruling during the pendency of a case.</p> <p>It was held by the Court that the Order passed by the Appellate Tribunal is legal and holds field. The matter was decided in the favour of respondent.</p>
2015 PTD 30 (Trib.)	S 32 of the Customs Act, 1969 R 298 of the Customs rules, 2001	<p>In this case, the appellant had obtained approval for import of Zinc to be used in the manufacture of goods (sanitary fitting) for export without payment of customs duty and tax.</p> <p>Later on, it was discovered by the Department that the appellant had exported copper coated wire instead of sanitary fitting and found appellant guilty of misusing and abusing the facility of DTRE.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
		<p>The Tribunal held that appellant was duty bound to adhere to the promise made in the application of exporting sanitary fitting and that a mis-declaration was made which tantamount to fiscal fraud.</p> <p>The Tribunal upheld the order of adjudicating authority.</p>
<p>2015 PTD 63 (Trib.)</p>	<p>Ss 8(2), 7, 2(46), 11(2), 33, 34 &amp; 71 of Sales Tax Act, 1990 Chapter III of Sales Tax Special Procedure Riles, 2007</p>	<p>The appellants are Individual Power Producers (IPPs) and engaged in production and supply of electricity to WAPDA. The dispute is regarding apportionment of input tax between 'taxable' and 'non-taxable' supply specifically against Capacity Purchase Price (CPP).</p> <p>The Department confronted IPPs on the contention that since CPP constitutes 'non-taxable supply', input tax claim must be restricted to the 'taxable supply' only whereas IPPs has claimed entire input tax.</p> <p>Contrary to the inference drawn by the Department, the appellants contended that CPP is segment of tariff/sale consideration of electricity and is one of the component of consideration for taxable supply, hence no apportionment is required.</p> <p>The appeals were rejected and order in original as well as order in appeal were upheld.</p>
<p>2015 PTD 107 (Supreme Court)</p>	<p>S 158 of the Customs Act, 1969</p>	<p>In this case, Customs authority had information about an individual (appellant), who is Iranian National, stopped over in Karachi on route to Singapore as a transit passenger that he would try to smuggle gold. The authorities searched him and found 85 bars of gold. The gold was seized and individual was served with show cause notices and penalty of Rs. 500,000.</p> <p>The Lahore High Court had decided the case on the point of limitation and concluded that case was time-barred.</p> <p>The learned Supreme Court dismissed the appeal upholding the above decision of High Court. It also held that appellant was rightly searched and custom authorities had jurisdiction to search him when he was leaving the custom station.</p>
<p>2015 PTD 116 (H.C.Baluchistan)</p>	<p>Ss 156, 179, 181, 193 &amp; 196 of the Sales Tax Act, 1990</p>	<p>In this case, the instant petition had been filed by an individual from whom 300 tolas of gold was seized by the Custom authorities from Gawadar port on 20<sup>th</sup> January 1994.</p> <p>The Hon'ble court dismissed the appeal being time barred.</p>
<p>2015 PTD 134 (H.C. Sindh)</p>	<p>S 196 of the Customs Act, 1969</p>	<p>In this case, Adjudicating Officer and Collector (Appeals) had decided 67 appeals through three combined orders-in-original and single order-in-appeal. The Appellate Tribunal set-aside the orders on the contention that the orders so passed were not speaking orders, therefore, adjudicating officer should pass afresh orders independently stating the facts of each case.</p> <p>Through this reference application, the appellant has challenged the order passed by the learned Tribunal contending that the orders should have been annulled on the basis of facts of the case instead of remanding back the issues.</p>



CITATION	SECTION(S)	ISSUES INVOLVED
		The Hon'ble High Court dismissed the application and upheld the order of Tribunal.
2015 PTD 152 (H.C.Lah.)	Ss 2(46), 7(1), 20, 34, 47 & 73 of the Sales Tax Act, 1990	<p>Through this reference application, applicant (registered person) has agitated the order passed by the Appellate Tribunal whereby the input tax adjustment was not allowed to the petitioner and additional tax and penalty levied by the adjudicating officer were confirmed.</p> <p>The petitioner failed to provide proof of payment under section 73 of the Sales Tax Act, 1990. The High Court held that registered person is allowed to claim such input tax adjustment for which he has received payment in accordance with Section 73, and in absence thereof Tribunal rightly denied the adjustment. The issue was decided against the applicant.</p>
2015 PTD 165 (H.C. AJ&K)	Ss 25 and 72 B of the Federal Excise Act, 2005	<p>In this case, the petitioner was required to furnish sales tax and federal excise record under section 25 of the Sales Tax Act, 1990. Subsequently, the case of petitioner was also selected for audit under section 72B. The petitioner contended that adjudication officer has no jurisdiction to conduct audit under section 25 of the Sales Tax Act, 1990 coupled with section 46 of the Federal Excise Act, 2005. Only FBR has power to select the case of person for audit under section 72B of the Sales Tax Act, 1990.</p> <p>It was held that Commissioners and officers are authorized to ask any taxpayer to produce records and documents and powers of FBR (u/s 72B) never ousted the jurisdiction of Commissioner (u/s 25).</p>
2015 PTD 175 (H.C.Lah.)	Ss 3(1A), 2(41) & 13 of the Sales Tax Act, 1990	<p>The petitioners are engaged in manufacture and supply of exempt goods and were being charged 'further tax' under section 3(1A) of the Sales Tax Act, 1990. The petitioners contested that since they are not liable to obtain sales tax registration, therefore, not liable to pay 'further tax'.</p> <p>The petition was accepted and it was held that section 3(1A) is not applicable on petitioners and 'further tax' paid by them be refunded.</p>
2015 PTD 181 (H.C.Sindh)	Ss 3, 14-A & 16 of the Customs Act, 1969	<p>In this case, Petition was filed by the owner of imported goods (trucks) which were seized by the Custom authorities without issuance of any show cause notice on the contention that trucks would be used for transportation of goods. Show cause notice was then issued during pendency of appeal and after four months of seizure.</p> <p>The petitioner contended that trucks were imported as specialized mounted machinery for use in construction projects.</p> <p>It was observed that objections raised by the Custom authorities were based on presumption and possibility of subsequent misuse of goods imported whereas Custom authorities were required to make assessment of goods on 'as presented' basis. The show cause notice issued at belated stage was declared void and directed to release the imports of the petitioner after payment of duties and taxes.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
2015 PTD 221 (H.C.Lah)	S 40B of the Sales Tax Act, 1990  S 45(2) of the Federal Excise Act, 2005	In this case, the appellants/petitioner have challenged the proceedings initiated by the Authorities to monitor production, sales of taxable goods and stock position of the company. It was also contended that powers has been exercised without issuance of show cause notice.  It was held that show cause notice was not required because the order under section 40B of the Sales Tax Act, 1990 and 45(2) of the Federal Excise Act, 2005 were not adverse orders against the taxpayers. The appeals/petition were dismissed.
2015 PTD 231 (H.C.Pesh.)	R 6(1) of the Federal Excise Duty & Sales Tax on Production Capacity (Aerated Water) Rules, 2013	Through this petition, amendment brought in Rule 6(1) of the Federal Excise Duty & Sales Tax on Production Capacity (Aerated Water) Rules, 2013 through SRO 140(1)/2014 was challenged with respect to its retrospective application. Through this amendment, input tax adjustment in a month had been restricted to 72% of the gross amount of tax payable.  It was held that rights already accrued in favour of person under a valid law cannot be taken away through subordinate legislation and that any beneficial subordinate legislation can be given retrospective effect.
2015 PTD 245 (H.C.Sindh)	Ss 3, 4 & 51 of the Sales Tax Act, 1990	In this case, issues relating to applicability of sales tax on lease of aircrafts has been discussed, however, the case has been decided through interim order.
2015 PTD 313 (H.C.Lah.)	Ss 73 & 47 of the Sales Tax Act, 1990	The reference application was filed by the Department against the order of Appellate Tribunal. The department contended that the registered person (RP) was carrying out transaction through personal bank account instead of business bank account, therefore, same are not allowable under section 73 of the Sales Tax Act, 1990.  The Tribunal held that business bank must be one registered with the Department. In the instant case, the personal bank account of RP was taken as business bank account and all transactions were made through banking channels, therefore, adjustment of input cannot be denied. The Hon'ble High Court upheld the decision of the Tribunal and decided the matter in favor of RP.
2015 PTD 319 (Trib.)  (2015) 111 TAX 1 (Trib.)	Ss 3, 2(23), 8, 12(2) & 14 of the Federal Excise Duty, 2005	In this case, the appellant (Department) had treated the 'Late charges' earned for the arrangement of financing facilities attracts federal excise duty (FED) similar to federal excise duty payable on brokerage services by the stock brokers.  The Tribunal upheld the decision of CIR(A) which held that late payment charges are not part of commission income and therefore is not subject to FED.
2015 PTD 349 (H.C.Sindh)	Ss 14 & 33 of the Sales Tax Act, 1990  S 13 & 19 of the Federal Excise Act, 2005	The petitioner is an unregistered person (not liable to be registered) as he does not carry on any business of manufacturing of taxable activity. The personnel of DGI&I raided the business premises of the petitioner, arrested him, extorted two blank cheques, seized the goods and sealed the premises and registered F.I.R. against him.

CITATION	SECTION(S)	ISSUES INVOLVED
	S 203 of the Criminal Procedure Code (V of 1898)	<p>The petitioner contented that no show cause notice was issued for registration under Sales tax Act, 1990 or Federal Excise Act, 2005, nor the taxability was ever determined.</p> <p>The Hon'ble High Court quashed the F.I.R and all pending proceedings against the petitioner and held that impugned F.I.R and the proceedings emanating therefrom are without lawful authority and officials of DGI&amp;I have acted without jurisdiction and in violation of express provision of law.</p>
.2015 PTD 360 (Trib.)	<p>Ss 11(2), 11(3), 3, 6, 7, 8A, 23, 26, 33, 34 &amp; 73 of the Sales Tax Act, 1990</p> <p>SRO No.283(I)/2011, 1012(I)/2011, 1058(I)/2011, 1125(I)/2011</p>	<p>In this case, the assessing officer issued combined show cause notice under section 11(2) and 11(3) of the Sales Tax Act, 1990. Section 11(3) was inserted vide Finance Act, 2012 and tax periods are pertaining to 2011.</p> <p>It was held that insertion of the sub-section adversely affected the right of the registered person as such, it would not be appropriate to apply it retrospectively. Further, Section 11(2) and 11(3) are different and independent thus issuance of combined notice under two different sections was fatal. The orders and show cause notices were declared illegal, void and without legal impropriety.</p>
2015 PTD 416 (Trib.)	<p>Ss 4, 3(1), 11(3) &amp; 36 of the Sales Tax Act, 1990</p> <p>SRO No.283(I)/2011, 621(I)/2005, 494(I)/2013, 1125(I)/2011</p>	<p>In this case, the registered person is a manufacturer and supplier of zero rated goods (surgical instruments). The assessing officer issued combined show cause notice under S 11(2) &amp; 11(3) and determined sales tax liability at the rate of 16% / 17% for the tax periods from July 2009 to June 2012.</p> <p>It was held Section 3 is a charging section but Section 4 has an overriding effect on the provisions of section 3. Accordingly, surgical items shall be subject to sales tax at the rate of 0%, however, supply of notified goods made to unregistered person shall be subject to sales tax at the rate of 16%.</p> <p>It was further held that penalty under section 33 cannot be imposed unless and until each and every subsection of it is specifically confronted in the show cause notice, It would, otherwise, fall beyond the scope of show cause notice which would render it illegal.</p>
2015 PTD 558 (Trib.)	S 48 & 72 of the Sales Tax Act, 1990	<p>In this case, the appellant had filed miscellaneous application for grant of stay against recovery of disputed tax demand. The impugned order was passed without issuance of show cause notice under section 48.</p> <p>The Tribunal granted stay for a period earlier of, 30 days or till the decision of main appeal and directed the department to restrain from taking coercive measures.</p>
2015 PTD 560 (H.C.Lah.)	Section 186 of the Customs Act, 1969	<p>In this case, the imports of petitioner were first assessed and taxes and duties due were paid. Instead of releasing the consignment, the custom authorities suspected that the goods imported are tin plates and not electrical silicon steel sheets. Samples were drawn and tested. Both the reports resulted in favor of the petitioner.</p> <p>The Hon'ble High Court allowed the petition and directed the custom authorities to release the goods.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
2015 PTD 570 (H.C.Pesh.)	Ss 17, 156, 193, 194-A & 196 of the Customs Act, 1969	In this case, vehicles were confiscated being either smuggled one or their certificate of registration/ bill of entry were suspected to be forged. Vehicles were examined through Forensic Science Laboratory and based on its report, vehicles were detained. Appeals filed against confiscation were dismissed by the appellate authorities and High Court declined interference.
2015 PTD 611 (Trib.)	Ss 15, 17, 32, 79, 89, 156(1) & 194-A of the Sales Tax Act, 1990  S 53 – 57 of the Trade marks Ordinance, 2001	In this case, the importer (respondent) was accused of infringement of the goods/right/trademark upon complaint lodged with custom authorities received from a company claiming the alleged infringement of their rights to trademark.  The Tribunal held that the complaint lodged was not in manner as provided by the Trade Marks Ordinance and letter of complainant suggest issue of parallel imports rather than any infringement. The appeal was dismissed.
2015 PTD 687 (Trib.)	S 194-B of the Customs Act, 1969	The appellant had filed rectification application for rectification of Order so as to rectify the error of excess assumption of jurisdiction.  The Tribunal perusing the contents of the application held that a judgment signed and announced could not be declared annulled, set aside or modified by means of rectification application.
2015 PTD 694 (Trib.)	S 32, 79, 156 of the Customs Act, 1969	The appellant was accused of mis-declaration of origin of goods even in the presence of certificate of origin of goods. The assessing officer failed to prove the certificate as non-genuine.  The appeal was allowed.
2015 PTD 702 (H.C.Sindh)	Sections 4 of the Sales Tax Act, 1990  SRO 670(I)/2013	The petitioner was issued Provisional Certificate in terms of Clause 2 of SRO 670(I)/2013 which inter alia provided that the certificate will be cancelled retrospectively if manufacturer had mis-declared or concealed any material fact.  Later on, the certificate was cancelled whilst alleging that the appellant did not have in-house manufacturing facility.  It was held that since provisional certificate was issued in terms of SRO 670(I)/2013, any condition attached could not go beyond the mandate of SRO. The CIR did not have any power to give retrospective effect to cancellation of certificate already issued. Petition was allowed.
2015 PTD 734 (H.C.Pesh.)	S 3 & 13 of the Sales Tax Act, 1990  SRO 165(I)/2010 180(I)/2011	The issue relates to restriction of benefit provided in SRO 180(I)/2011 when taxpayer is entitled to benefit under both the SROs 165 and 180. The difference between 'benefits' provided under both the SROs was that the later was restricted to 50% of the leviable rate of sales tax while the former had no such restriction.  The high Court declared the SRO 180(I)/2011 illegal being based on 'mala-fide in law'.

CITATION	SECTION(S)	ISSUES INVOLVED
(2015) 111 TAX 87 (Trib.)	S 33, 34, 36 of the Sales Tax Act, 1990	<p>In this case, appellant contested the ex-parte order passed by the DCIR before CIRA. The appeal was failed on point of limitation.</p> <p>It was held that where limitation is concerned, it does not create a favor in right of other party, however, if appeal is time-barred, it is duty of the person approaching court to submit an explanation/application but no such application was filed by the appellant, the appeal, therefore, failed at this forum too.</p>
(2015) 111 TAX 109 (Supreme Court of Pakistan)	S 196 of the Customs Act 1969	The issue was decided on point of limitation. The petitioner failed to prove that order had not been served on him, therefore, the order had been presumed to be served on him.
(2015) 111 Tax 133 (H.C. Pesh.)	S 14 & 16 of the Sales Tax Act, 1990 R 3 to 17 of Sales Tax Rules 2006	<p>In this case, the petitioner is engaged in supply coal and has not charged sales tax as a result of general practice. The question of law raised w.r.t. obligation for registration under Sales Tax Act, 1990, obligation to withhold sales tax and legal import of Section 65 of the Act.</p> <p>It was settled by the Court that persons mentioned in Rule 4 making taxable supplies are liable to registration and bound to pay sales tax and as regards to application of Section 65, it stated that the competent authority to allow the same is Federal Government which has to expeditiously proceed to decide the same in accordance with law. The case was remanded back to the Tribunal so to decide if petitioner is liable to registration under Rule 4 of the sales Tax Rules, 2006.</p>
(2015) 111 Tax 147 (Trib.)	S 11, 25, 33, 34, 36 & 45A of the Sales Tax Act, 1990	<p>In this case, the adjudicating officer created demand based on presumptions and fishing enquiry.</p> <p>The show cause notice under reference is a second show cause notice. It was held that second show cause notice on the same issue and same basis for same period is illegal and void.</p>
(2015) 111 TAX 160 (H.C.Lah.)	S 196, 156, 181, 196 of the Customs Act, 1969.  SRO 499(1)/2009	<p>The issue relates to confiscation of vehicle without giving option of redemption subject to fine under section 181 of the Act to pay fine in lieu of confiscated vehicle.</p> <p>The Court upheld the order of confiscation of seized vehicle and directed the adjudicating officer to give option to the petitioner to fine in lieu of confiscated vehicle.</p>

## SYNOPSIS OF IMPORTANT CASE LAWS

### DIRECT TAX

CITATION	SECTION(S)	ISSUES INVOLVED
(2014) 110 TAX 106 Trib.	Section 161 Income Tax Ordinance, 2001	In this case, the department passed order under Section 161 on alleged ground that the tax payer has not deducted the tax and for some of the expenditures it was case of the department that since the purchases were not disclosed by the respective entities in their Sales Tax Returns, the evidence furnished by the Taxpayer was not considered. In the first appeal the Learned CIR Appeals held for some of the expenses that the taxpayer has duly discharged its liability to withhold the tax, whereas for certain other expenditures he remanded the matter for reexamination. The Taxpayer as well as the department preferred appeal before the learned Tribunal. Against the issues remanded by the Learned CIR Appeals, it was contented by the Taxpayer that the evidence on record has not been considered and there was no failure on the part of the Taxpayer as the tax was not deducted due to Statutory none obligation to deduct tax and the exemption certificates in favour of the recipient of payment. The Learned Tribunal examined the case and held that the taxpayer's evidence has not been correctly appreciated and the issues remanded by the Learned CIR Appeals were examined on merits and relief was granted to the taxpayer.
2014 PTD 1377	Section 59 Income Tax Ordinance, 1979	In this case, the assessee filed their returns under Self-Assessment Schemes ("the Schemes") for the assessment years 1990-91, 1991-92 and 1992-93. The Schemes were issued vide Circular No.5 of 1990 dated 25-6-1990, Circular No.22 of 1991 dated 21-7-1991 and Circular No.16 of 1992 dated 1-7-1992 respectively. The returns of assessee were set apart (excluded from the Schemes) for total audit (normal assessment), because gross understatement of income was suspected; In some of the cases the reason of gross understatement was declaration of low Gross Profit Rate ("GP Rate") as compared to declaration in previous years and in other cases less sales were alleged to have been declared. After setting apart, normal assessments under section 62 of the Repealed Income Tax Ordinance, 1979 were passed. The action of setting apart was challenged before Commissioner (Appeals). The first appellate authority accepted appeals of assessee with the observation that department did not have definite information regarding the alleged understatements, therefore, actions of setting apart were cancelled. In second appeal before the Tribunal, the decisions by first appellate authority were upheld holding that allegations of understatement were not supported by material evidence. The Department filed Income Tax Appeals. The Hon'ble High Court examined the respective scheme of Self-Assessment and came to the conclusion that cases could only be set apart on the basis of definite information. Their lordships held that mere suspicion would not authorize the department to set apart the case from Self-assessment Scheme. While deliberating on the point is has also been observed that the 'State does not cheat the citizens' is the doctrine which leads the subjects to follow the schemes/invitation by the Government. Any unscrupulous action by a department under such schemes would lead to mistrust and result anarchy. The purpose of Self-Assessment Scheme was enshrined by the Apex Court in Income-Tax Officer and another v. Messrs. Chappal Builders (1993 PTD 1108 = 1993 SCMR 1108) in following words:-  "Self-assessment scheme introduced in the Income Tax Law of Pakistan is to encourage the taxpayers to make contribution

CITATION	SECTION(S)	ISSUES INVOLVED
		<p>towards the State efforts in running the Government and other related State machinery more willingly than it used to be under the normal assessment scheme. One purpose was to save an honest taxpayer from unnecessary suspicion, accusation and torture of being accused and/or found guilty of deceit and falsehood. This being the main purpose, care was taken to safeguard the interest of the State also against deceit and cheating even in the self-assessment scheme. For the latter purpose the scheme as well as the provisions in the Income Tax Ordinance provided for a very limited re-opening of the self-assessment."</p> <p>The Hon'ble Court also referred to the guidelines for re-opening a case under self-assessment, in the case of Chappal Builder, which has a binding force:-</p> <p>"It was the duty of the department before re-opening a case of self-assessment to be in possession of definite information regarding the department's assertion against the assessee. The expression "definite information" and similar other expressions used in the above noticed provisions or other related provisions certainly meant much more than mere material so as to cause a reasonable belief or even such evidence, which might lead to a definite belief. Unless there is definite direct information and there is no further need to put the said definite information to trial by putting in further supporting material the process of self-assessment could not be re-opened."</p> <p>On the basis of above observations, it has been held that the requirement of definite information has not been met and the departmental applications were decided against the department and in favour of the assesseees.</p>
<p>2015 PTD 681 LHC</p>	<p>Section 121(1)d read with section 120.  Income Tax Ordinance, 2001</p>	<p>In this case, the Department proposed following question of law in respect of tax year 2003 to 2009.</p> <p>"Whether under the facts and circumstances of the case, learned Appellate Tribunal was justified to hold that provision of section 121(1)d of the Income Tax Ordinance 2001 could not be invoked for non-submission of documents during audit proceedings, in presence of order under section 120 of the Income Tax Ordinance, 2001."</p> <p>In these case facts are that return under Section 114 of the Income Tax Ordinance 2001 were filed by the Taxpayers for Tax years 2003 to 2009. The returns attained status of assessment orders under Section 120. Cases of the Taxpayers were selected for audit of their tax affairs under Section 177 and were served with notices under Section 174(2) for production of record. On non-compliance, order under section 121(1)d were passed. The order were challenged by the Taxpayers and the matter went up to the Appellate Tribunal Inland Revenue, which held that provision of Section 121(1)(d) could not be invoked in presence of an order under section 120; department could have proceeded under section 122 after seeking explanation under section 176 from the taxpayer.</p> <p>The Hon'ble High Court while deciding the above question confronted the applicant department that similar legal proposition has already been decided and answered against the department in the case of Commissioner Inland Revenue (legal) v. Commissioner of Inland Revenue</p>

CITATION	SECTION(S)	ISSUES INVOLVED
		<p>(Appeals) and others reported in 2013 PTD 837 which has been upheld by the Hon'ble Supreme Court of Pakistan in Civil Petition No 526 of 2013 dated 9.5.2013. The Department however argued that similar question has been decided by Hon'ble High Court of Sindh in the case of M/s Sarah Construction Co through Partner Karachi v. Taxation Officer reported in 2013 PTD 682.</p> <p>The Hon'ble High Court examined the judgment pronounced by the Hon'ble High Court of Sindh and observed that the said court was not properly assisted as amendment in section 121(1)(d) was inserted through Finance Act 2012 whereas the case before the court was for tax year 2004. In view of the matter that the similar issued has been upheld by the Hon'ble Supreme Court binding under Article 189 of the Constitution, the above question was answered in affirmative and against the department</p>
2014 PTD 2063	Section 2 Read with Section 8 & 16 Wealth Tax Act, 1963	<p>In this case, the Hon'ble Lahore High Court reframed the following question and thereafter examined the issue as to whether Assistant Commissioner is authority under section 2(1)(10) of the Wealth Tax act 1963. The question of law reframed by the Hon'ble High Court is reproduced for convenience and read reference.</p> <p>"Whether under the facts and circumstances of the case, the Tribunal was justified to annul the assessment for the reason that Assistant Commissioner is not an Authority under section 2(1)(10) read with Section 8 of the Wealth Tax Act, 1963?"</p> <p>Brief facts of the case are that an assessment was made for the Assessment Years 1994-95 to 1997-98 vide order dated 26.12.1997 under section 16(3) of the Wealth Tax Act 1963. On being assailed before Appellate Additional Commissioner, appeals were partly allowed. Cross appeals were filed before Appellate Tribunal. The Appellate Tribunal preferred to decide the appeals, against appellant department, on technical ground of jurisdiction. It was held that Assistant Commissioner (assessing officer) was neither arrayed as an Authority under the section 8, nor was included in the definition of Deputy Commissioner under section 2(1)(10) of the Wealth Tax Act 1963.</p> <p>It has been held by the Hon'ble High Court that Assistant Commissioner is included within the definition under section 2(1) (10) viz. Deputy Commissioner. Therefore it has been observed that therefore, assessment framed under Section under section 16(3) of the Wealth Tax Act 1963 was valid. It was further held that as Appellate Tribunal had not decided the appeals on merits, therefore, the appeals shall be deemed pending before it for decision afresh.</p>
2014 PTD 1419	Section 236 Income Tax Ordinance, 2001	<p>Brief facts of the case are that the taxpayer is engaged in the business of running a public call office, whereby a customer uses the pay phone of the petitioner for making a call and then at the end of the call pay for the units consumed. This is different from pay phone companies who issue prepaid phone cards. However, ignoring this distinction show cause notice under section 161 of the Ordinance was issued relating to tax years 2004 and 2005. Reply filed by the taxpayer could not satisfy the Taxation Officer, who concluded proceedings and held taxpayer as personally liable to pay the tax vide order passed under the section 161. The taxpayer challenged this order before Commissioner (Appeals), but remained unsuccessful. The order of the Taxation Officer was upheld. The taxpayer filed second appeal before the Tribunal, which was decided in its favour, wherein the learned Tribunal held that the business of prepaid cards was different from</p>



CITATION	SECTION(S)	ISSUES INVOLVED
		<p>the business of pay phone companies, whereby only units were being sold to its customers and held that section 236(1)(b) is not applicable to the case of the taxpayer. The Department proposed following questions of law in its application for opinion of the Hon'ble High Court:-</p> <p>(a) "Whether on the facts and in the circumstances of the case, the ITAT was justified to annul the order passed under section 161 of the Income Tax Ordinance, 2001 for default of non-deduction of tax under the provisions of section 236(1)(b)(3) of the Income Tax Ordinance, 2001, When the nature of the business and system operated by the company was identical with the prepaid companies, who are obliged to collect tax under section 236(l)(b)(3) of the Income Tax Ordinance, 2001?"</p> <p>(b) "Whether on the facts and circumstances of the case, the ITAT was justified to annul the order when the assessee company was under legal obligation to collect tax on its sales @ 10% in terms of provisions of section 236(1)(b)(3) of the Income Tax Ordinance, 2001?"</p> <p>The department argued that the decision of learned Tribunal was against the verdict given by the Hon'ble</p> <p>Supreme Court of Pakistan in case Call Tell (Pvt.) Ltd., and another v. Federation of Pakistan and others 2004 PTD 3032 and a judgment by Sindh High Court in case Union Cosmic Communications (Pvt.) Ltd. Karachi v. Central Board of Revenue and another (2006 PTD 1678). It was also contended that the business of Pay Phone Companies is similar to the business of the companies which issued Prepaid Cards. She added that Pay Phone Companies also issued prepaid cards to sell the units to the consumers.</p> <p>The Hon'ble Court examined the provisions of Section 236 as it stood in the tax year 2004 and 2005 and observed that said section clearly spells out that the liability of the advance tax shall be collected on the amount of Prepaid Cards for telephones. It was observed that admittedly the respondent taxpayer does not sell any prepaid cards, but in fact sells units, which are consumed by the consumers. The difference between the business of payphone company dealing with prepaid cards and the company dealing with units becomes clear when amendment introduced in the year 2010 in section 236(1)(c) and (3A), are considered. On the basis of examination of provisions of law as relevant to the Tax years 2004 and 2005 it has been observed that it is clear that in the year 2004-2005 the liability to deduct the advance tax was restricted to pay phone companies dealing in sale of prepaid cards only. Business of selling prepaid cards is different from selling of units as has been highlighted by the legislature through the amendment brought about in section 236(1)(c) and (3A).The cases referred by the department were examined and found to be distinguishable The Hon'ble High Court, therefore, held that in the year 2004-2005 section 236(1) was not applicable to the case of payphones dealing with the sale of units. Their lordship answered to both the questions of law raised in this reference in affirmative and decided the reference applications against the department accordingly.</p>
(2014) 110 TAX 180	See also (2014) 111 TAX 68, (2014) 111 TAX 145 Section 122	In this case issue was raised by the Taxpayer before the learned Tribunal that assessment under section 122 is barred by time. It was submitted by the tax payer that the original assessment in the present case was made on 30-09-2007 while notice under section 122(1) read with section 122(5)

CITATION	SECTION(S)	ISSUES INVOLVED
	Income Tax Ordinance, 2001	<p>&amp; (9) of the Income Tax Ordinance, 2001 was issued on 05-11-2012. It was argued that assessment framed u/s 122 is not maintainable being framed after lapse of statutory limitation as envisaged in sub-section (2) of section 122 of the Income Tax Ordinance, 2001 It was submitted that as per provisions of law the DCIR was bound to amend the assessment on or before 30-09-2012. In this regard reference was made to the reported judgment cited as (2013) 107 Tax 141 (Trib). The learned Tribunal following its earlier decision held that the assessment is barred by time.</p>
<p><b>EDITORIAL NOTE</b></p>		<p>The issue as to whether Original time limit will apply or extended limitation as per finance Act 2009 will apply, came up for consideration before this Hon'ble Tribunal in case now reported in 2012 PTD (Trib) 1936 and also reported in (2013) 107 Tax 141 (Trib) where it has been held that original limitation will apply and action taken on the basis of amended sub-section (2) and (4) of Section 122 through Finance Act, 2009 will be time barred. The department challenged the decision of this Hon'ble Tribunal (2012 PTD Trib. 1936), before the Hon'ble Lahore High Court, which approved the decision of this Hon'ble Tribunal. The decision of Hon'ble Lahore High Court is now reported in (2014) 110 Tax 298 HC Lahore</p> <p>The department filed Civil Petition No.1306 of 2014 before the Hon'ble Supreme Court of Pakistan against the judgment of Lahore High Court. The Hon'ble Supreme Court vide judgment dated 3.9.2014 dismissed the departmental Civil Petition. The operative part of the said judgment of the Hon'ble Supreme Court is reproduced hereunder for the convenience of the learned members of the Bar.</p> <p>“The learned High Court while answering these questions has considered the earlier provisions of Section 122(2) of the Income Tax Ordinance, 2001 and taking into account the subsequent amendment brought in the above law by virtue of Finance Act, 2009 has come to the conclusion in paragraphs No.8 and 9 of the impugned judgment; that on the basis of the law applicable when the tax return was filed by the respondent an order of amendment could only be passed within a period of vie years and as per the facts of the case such period ended on 28.9.2009; whereas the show cause notice in the above context was issued on 13.5.2010. Thus it was categorically held that a vested right has been created in favour of the respondent assessee, which cannot be retrospectively taken away without there being an express intention of the legislature to do so. But the amended Section 122(2) is neither manifest nor unequivocal for such express/clear intention. Learned counsel for the petitioner has not been able to dislodge the reasoning assigned by the learned High Court in the impugned judgment and we are not persuaded to interfere therewith on the basis of the facts before us. The conclusion drawn by the learned High Court that Section 122(2) as amended by the Finance Act, 2009 shall have no retrospective effect and would not annul the past and closed transaction, when the assessment in favour of the respondent as per the deeming clause under Section 120 had become conclusive and the period for the purpose of invoking earlier Section 122(2) had expired on 28.9.2009, does not call for interference. In light of the above, this petition has no merit which is hereby dismissed.”</p>

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2014 PTD 1931	Section 21(L) Income Tax Ordinance, 2001	<p>In this case, while deciding reference application of the department, the Hon'ble High Court Peshawar High Court has held that the provision of clause (l) of Section 21 will be applicable on the purchases of raw material. Their lordships came to such conclusion after examining the expression "any expenditure" as used in clause (l) of Section 21 of the Income Tax Ordinance 2001.</p>
(2014) 110 TAX (Trib) 183	Section 161 & 174 Income Tax Ordinance, 2001	<p>In this case, orders under Section 161 were passed for certain tax years against which the Taxpayer/appellant filed appeal against such orders u/s 127. The appellate authority remanded the cases, against which the Taxpayer preferred further appeal before the learned Appellate Tribunal.</p> <p>Firstly the challenged was made against remand order and it was contended that the first appellate authority should have annulled the orders rather than remanding the matter to the taxation officer which, tantamount to granting an opportunity to the revenue to fill in the lacunas and deficiencies in the first round of proceedings.</p> <p>In respect of tax years 2003 to 2006, it was contended that the very initiation of proceedings under section 161 read with 205 of the Income Tax Ordinance, 2001 is hit by limitation as these proceedings were admittedly initiated beyond the time limitation enunciated in section 174(3) of the Ordinance regarding maintenance/preservation of books of accounts. In this regard, it has been contended that no matter the provisions of section 161 of the Ordinance do not specify any specific time limitation regarding conclusion of these proceedings, however, if the provisions of the statute are read as a whole, this time limitation clearly emerges from section 174(3), cited supra, as since the law does not expect a taxpayer to maintain books beyond a certain time limit how could the tax authorities have a mandate to initiate and conclude proceedings beyond such time limitation. In this regard, the appellant heavily relied upon recent decision of Sindh High Court in the case of Habib Bank Limited v. Federation of Pakistan now reported as [(2013) 108 Tax 294 (H.C. Kar, )</p> <p>For all the years, it was further argued that the manner in which the proceedings have been completed which lack lawful jurisdiction and authority, because the liability has been determined in an arbitrary manner without identification of the names and addresses of the parties or persons from whom and how much tax was to be deducted by the appellant. In this respect, it was submitted that unless it is established that (a) taxpayer is a withholding agent; (b) a particular transaction is liable to deduction/withholding; and (c) that a specified tax of a specific person was to be withheld, who could take credit of the tax recoverable under section 161, proceedings could not be granted legal cover. In this regard, it was reiterated that since in each year, the aforesaid mandatory requirements have been altogether ignored and brushed aside by the taxation officer, therefore, these proceedings were ab-initio legal and unlawful, hence the first appellate authority should have annulled the rather than remanding the matter for adjudication afresh. In this regard, several decisions were cited.</p> <p>The learned Tribunal after examining the facts of the accepted the contention of limitation by relying on the judgment of Hon'ble High Court of Sindh Court in the case of Habib Bank Limited v. Federation of Pakistan now reported as [(2013) 108 Tax 294 (H.C. Kar, ).</p>

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		<p>It was further observed in this case there was no valid and lawful reason for remand in the circumstances applicable in these years. That is so because firstly, remand in a casual manner has always been deprecated by superior judiciary on the grounds that this tantamount to provide tax authorities with an opportunity to fill in legal lacunas and deficiencies which is not lawful and thus should be avoided unless exceptional circumstances warrant a remand order.</p> <p>In connection with the submissions of the appellants vis-à-vis the manner in which the proceedings have been concluded by the taxation officer i.e., without identification of transactions and parties, it has been observed by the learned Tribunal that no exception could be taken from the decisions relied upon by the learned counsel during the appeal proceedings. and agreed with the ratio decidendi of the judgments cited by the appellant that in the absence of this exercise, the proceedings concluded by the taxation officer would always lack substance and lawful mandate. Appeals of the Taxpayer were accepted and order passed under Section 161 were annulled and appellate orders of the first appellate authority were vacated.</p>
2014 PTD 1874	Section 100A read with Sixth and Seventh Schedule Income Tax Ordinance, 2001	<p>In this case, a listed banking Company filed an Income Tax Reference Application under Section 133 of the Income Tax Ordinance 2001, against the decision of learned Tribunal and following proposed question of law was framed for considered of Hon'ble High Court.</p> <p>"Whether under the facts and circumstances of the case, the learned ATIR was justified to uphold the taxation of reversal of provision of defined benefit plan (Approved Pension Fund), under Rule 1 of the Seventh Schedule read with section 100A of the Ordinance of 2001, without pointing out any specific rule of the same Schedule (as envisaged in Rule (9) which has dealt with the taxation of above said Approved Pension Fund, therefore, Rule 4 in Part II of Sixth Schedule was applicable?"</p> <p>Facts of the case are that the said banking company established a Pension Fund (Defined Benefit Plan) through a Trust Deed for the benefit of its employees. Applying this method of accounting the financial statement of the banking company reflected the 'surplus' as income for the Tax Year, 2011. However, the said "surplus" or "reversal of provision for approved pension fund" was not offered for tax by the said bank in its income tax return on the basis of clause (4), Part-II of the Sixth Schedule to the Income Tax Ordinance, 2001 which requires that unless the said surplus is actually repaid to the banking company it shall not be deemed to be its income. The said treatment made by the banking company was rejected and the Additional Commissioner amended the return vide order dated 28-2-2013 under section 122(5A). The said amendment order was upheld by the Commissioner (Appeals) on 10-5-2013 and affirmed by Appellate Tribunal.</p> <p>It was argued on behalf of the banking company that it enjoys exemption under Rule 4 of Part-II of the Sixth Schedule to the Income Tax Ordinance 2001 and the 'surplus' accruing under the Pension Fund cannot be considered to be the income unless the said amount is repaid to the banking company i.e., until the amount is actually transferred from the Pension Fund to the bank. It was submitted that the accounting system on accrual basis under the International Accounting System (IAS) cannot override the provisions of the Ordinance. It was submitted that Rule 4 of Part-II of the Sixth Schedule provides that in respect of a pension fund, the</p>

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		<p>accounting methodology is on cash basis. The general principles of financial accounting or the Rules under the Seventh Schedule cannot override the same. It was further submitted that Rule 4 of Part-II of the 6th Schedule is a special provision and read with Rule 9 of the Seventh Schedule overrides Rule 1 of the Seventh Schedule to the extent of pension funds.</p> <p>Whereas, the learned counsel for the respondent-department on the other hand submitted that the case of the banking company is covered under Rule 1 of the Seventh Schedule. He submitted that Seventh Schedule being a special law specifically tailored for the Banking Companies, takes preference over the general provisions under the Ordinance including Clause 4, Part-II of the Sixth Schedule. Reliance was placed on number of judgments.. Learned counsel further submitted that Seventh Schedule draws its substantive power under Section 100A and placed reliance on Rules 6 &amp; 8 of the Seventh Schedule in support of his contention.</p> <p>The Hon'ble Court explained the two methods of account i.e. accrual and cash system and observed that Whether the income so computed is taxable is not an accounting function and is to be determined by the taxing law. After examining the symbiotic yet independent relationship of accounting and taxation, the Hon'ble High Court examined Section 100A of the Ordinance and observed that it provides that income of any banking company shall be computed in accordance with the Rules under the Seventh Schedule which provides for "computation of profits and gains of a banking company and tax payable thereon." Rule 1 of the Seventh Schedule, inter alia, provides that income of a banking company shall be taken to be the income disclosed in the annual accounts required to be furnished to the State Bank of Pakistan. Under the said Rule, the accounts of the petitioner banking company, prepared under IAS-19 on accrual-basis accounting for Tax Year 2011, reflect the amount of "surplus" or "reversal of provision for approved pension fund" as the income of the banking company. It has been further observed that while the Income Tax Ordinance, 2001 deals with the taxability of a banking company under the Seventh Schedule, it specifically provides for taxability of Approved Superannuation Funds (Pension Funds) under Part-II of the Sixth Schedule. Rule 4, thereunder, provides that where any contribution to the pension fund by an employer, including interest thereon, is repaid to the employer, the amount so repaid is deemed for the purposes of tax to be the income of the employer. In other words, the surplus amount is deemed to be the income of a taxpayer for the purposes of tax only when it is repaid to the employer. The word repaid signifies actual repayment or pay back and falls under the scheme of cash-basis accounting. It has also been observed that Rule 9 of the Seventh Schedule provides that provisions of the Ordinance not mentioned in the Seventh Schedule shall apply mutatis mutandis to the banking company. Mutatis mutandis literally means "necessary changes having been made" and the phrase "apply mutatis mutandis," means, that the applicability of any other provision of the Ordinance to the Seventh Schedule will also include and bring with it all the necessary changes required to make the said provision of the Income Tax Ordinance 2001 functional under the law. It has been further observed that Rule 4 of Part-II of Sixth Schedule, structured on cash-basis accounting, once applicable to the banking company under the Seventh Schedule, will change the existing accrual-basis accounting in respect of the surplus arising in a Pension Fund, to cash-basis accounting. This change is mandated by the Income Tax Ordinance 2001 and Rule 9 of the Seventh Schedule. It has been further held that Sixth Schedule dealing with Superannuation Funds assumes the status of a special law for the purposes of determining the tax liability in respect of a pension fund as</p>

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		<p>compared to the overall taxability of the banking company under the 7th Schedule. It is settled that special law prevails over general law, hence in this case Rule 4 of Part-II of the 6<sup>th</sup> Schedule prevails over Rule 1 of the 7th Schedule to the extent of pension fund and shall apply to the 7th Schedule in the manner provided under Rule 9.</p> <p>The reference was allowed in favour of the banking company on the basis of above reasons and observations.</p>
2014 PTD 1881	Section 148 and 53 Income Tax Ordinance, 2001	<p>In this case the petitioners imported vessels for demolition and turning into scrap; the vessels were beached at the Gadani Ship Breaking Yard in Baluchistan. The advance income tax payable under Section 148 on such vessels was 1% of the invoice value, in view of Clause (9) of Part II of the Second Schedule to the Income Tax Ordinance 2001 which concession was subsequently withdrawn and therefore due such withdrawal of concession tax enhanced to 5%, and it is the enhancement in the rate of tax that has been assailed in these petitions inter alia on the grounds that when the letters of credit were made for imports the rate under Section 148 was 1% which cannot be enhanced by omitting clause (9) of Part II of the Second Schedule to the Income Tax Ordinance 2001 Secondly the omission of Clause (9) of Part II of the Second Schedule by notification was illegal as same was not in accordance with law. The Hon'ble High after examining the provisions of Section 53 and 148 held that omission of aforesaid clause was justified in law. However on the basis of judgments of Hon'ble Supreme Court of Pakistan, it has been held that if the valid and binding agreements for the transaction were made prior to the date of omission of concession, such imports would be tax on reduced rates and not on enhanced rates. Editorial Note. Member may read the original text of the judgment in which substantial case law has been referred.</p>
(2014) 110 TAX 328	Section 133 and 221 Income Tax Ordinance, 2001	<p>In this case, the Hon'ble Lahore High Court has held that no reference under Section 133 of the Income Tax Ordinance 2001 lies against order of rectification passed under Section 221 by the learned Tribunal.</p>
2015 PTD 630	Section 153 and 113 Income Tax Ordinance, 2001	<p>In this case that tax payer AOP deriving income from execution of contracts was held to be a prescribed person within the meaning of sub-clause (h) of Clause (i) of sub-section 7 of Section 153 (as association of persons, having turnover of fifty million rupees or above in tax year 2007 or in any subsequent tax year) for Tax Years 2010 and 2011 by the Departmental authorities under Section 161 in view of amendment made in Section 153 through Finance Act 2011 through which definition of turnover was inserted through clause (v) of sub-section 7 of Section 153 which included the gross receipts from execution of contracts.</p> <p>The case of the Tax payer before the tax authorities was that firstly the amendment made through Finance Act 2001 in respect of definition of turnover was prospective in nature and secondly prior to the amendment, there was no definition of turnover attached to Section 153 and the definition of turnover as provided under Clause (70A) of Section 2 was attracted. The taxpayer could not succeed in round of appeals and filed reference application before the Hon'ble high court.</p> <p>The Hon'ble High Court after examining the provisions of Section 153 and amendments made through Finance Act 2011 has held that amendment made in Section 153 (definition of turnover) is prospective in nature and cannot be applied for that year 2010 and 2011 respectively. It has also</p>

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		<p>been held by the Hon'ble Court that in the instant for tax year 2010 and 2011, the definition of turnover as contained in Clause (70A) of Section 2 would be attracted.</p>
(2014) 111 TAX 345	<p>Section 122 Income Tax Ordinance, 2001</p>	<p>In this case, the department passed order under Section 122 by ignoring the revised return filed by the Taxpayer. The learned Commissioner had remanded certain issues. The said treatment was challenged by the Taxpayer before the learned Tribunal. The learned Tribunal held that keeping in view above stated facts and the legal position of the case we are of the view that there was no justification for amending the assessment without considering the revised return filed by the taxpayer and same remanding by the learned Commissioner (Appeals). The taxpayer proved his case on the bases of facts with documentary evidence that he tendered himself with clean hands. The learned Tribunal allowed the appeal on the ground that the assessment in this case is made by ignoring amended assessment in the shape of revised return which has been filed by the taxpayer and is in the knowledge of the DCIR. Consequently, the impugned order of the learned Commissioner (Appeals) has been vacated and the order passed by the Taxation officer has also been cancelled and declared without any lawful authority.</p>