

ITBAK's News & Views

SEPTEMBER, 2005
To
MARCH, 2006

NV # 04/2006

A publication of the Income Tax Bar Association, Karachi covering information on recent important judicial pronouncements, circulars and clarifications

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IMPORTANT CIRCULARS AND NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
INCOME TAX			
Circular 7 of 2005	12-09-2005	Certain specified services rendered to exporters to be taxable at the rates applicable to the exporter of the goods being exported in respect of which the services are provided.	308
SRO (1)/2006	03-01-2006	Draft rules in respect of Electronic Filing of Returns	309
SRO 02(1)/2006	03-01-2006	Agreement for the avoidance of Double Taxation executed between Government of Pakistan and Austria notified	310
SRO49(1)/2006	06-01-2006	Agreement for the avoidance of Double Taxation executed between Government of Pakistan and Republic of Yemen notified	311
SRO85(1)/2006	03-02-2006	Exemption from applicability of withholding tax under section 148 and 153 to fully as well as partly designed /assembled cypher devices	312
SRO108(1)/2006	07-02-2006	Agreement for the avoidance of Double Taxation executed between Government of Pakistan and Bosnia Herzegovina notified	313
SRO272(1)/2006	21-03-2006	Exemption from applicability of withholding tax under section 148 and 153 to photography Equipment	314
SRO272(1)/2006	21-03-2006	Exemption from applicability of withholding tax under section 231A in respect of cash withdrawal in respect of cash withdrawal against compensation received from GOP	315
SRO379(1)/2006	18-04-2006	Notice of demand under section 137(2) prescribed	316
C No.3(18)(ITR)/05	22-10-2006	Rule 9(4) in respect of taxability of accommodation by joint occupants of a property explained	317
SALES TAX			
Notification SRO 1126(1)/2005	12-11-2005	Exemption of Sales Tax under SRO 1035(I)/2005 dated October 13, 2005 extended upto 120 days from 30 days in respect of goods supplied for the free distribution among the Earthquake victims.	318
Notification SRO 1184(1)/2005	01-12-2005	Prescribed the procedures for filing of Sales Tax Return electronically for all the registered persons falling in the Jurisdiction of Large Taxpayers Unit in Karachi and Lahore and the Private & Public Limited Companies Registered in other Collectorates of Sales Tax.	319
Notification SRO 1212(1)/2005	10-12-2005	CBR specified the National Bank of Pakistan's Branches for the payment of Sales Tax on prescribed return-cum-challan.	320
Notification SRO 1236(1)/2005	14-12-2005	Amendment made in Chapter-V of Sales Tax Special Procedure Rules, 2005 for the Collection and payment of Sales Tax on Electric power in respect of discharge of tax liability by KESC in Rule 35, 26, 37 and 37A.	321
Notification SRO 06 to 13 (1)/2006	05-01-2006	SRO amends the earlier notification in SRO No's from 927 to 930, 934, 935, 1039 and 1040 (1)/2005 dated September 10, 2005.	322

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
SRO 24(1)/2006	07-01-2006	CBR levied the fixed amount of Federal Excise Duty at the import stage in lieu of Federal Excise Duty payable at production or manufacturing stage.	323
Notification SRO 26(1)/2006	09-01-2006	CBR specifies the functions, powers and Jurisdiction of the officers of the Directorate General of Inspection and Internal Audit as officer of Sales Tax and Federal Excise to exercise the power under Sales Tax Act, 1990. The said SRO Superseded the earlier Notification No. SRO 722(1)/92 and 653(1)/2005 dated July 27, 1992 and July 01, 2005 respectively.	324
Sales Tax Order SRO 68(1)/2006	28-01-2006	Federal Government allows the solvent extraction industries to adjust the Sales Tax deducted at import stage on the import of rapeseed as input tax against the output tax charged on the supply of oil extracted from the seed. The above step is taken in order to the discourage the claim of refunds.	325
Sales Tax Order SRO 69(1)/2006	28-01-2006	Federal Government levies the Sales Tax at the rate of 13%, on import of rapeseed by the solvent extraction industries.	326
Notification SRO 73(1)/2006	28-01-2006	Amendments made in Rule 78 and 81 in Chapter XI of Sales Tax Special Rules, 2005 for the Ship-Breaking Industry.	327
Notification SRO 74(1)/2006	30-01-2006	SRO further amends the Notification No. SRO 1212(1)/2005 dated December 10, 2005 to specify the further branches of National Bank of Pakistan for the payment of Sales Tax.	328
Notification SRO 92(1)/2006	07-02-2006	SRO further amends the Notification No. SRO 1035(1)/2005 dated October 13, 2005 whereby the period of exemption extends upto period of 154 days instead of 120 days in respect of goods supplied for the free distribution among the Earthquake victims.	329
Sales Tax Order and Notification SRO 177 and 178(1)/2006	02-03-2006	Input tax on Canola Seed allowed to be claimed by the solvent extraction industries in line with the rape seed. The above amendment shall have effect retrospectively from the implementation of SRO 69 and 68(1)/2006 dated January 28, 2006.	330
Notification SRO 247(1)/2006	15-03-2006	SRO Amends the Notification No. SRO 927(1)/2005 dated September 10, 2006.	331
Notification SRO 312(1)/2006	30-03-2006	SRO Amends the Rule 44 of the Chapter-VI of Sales Tax Special Procedures Rules, 2005 in respect of Collection and payment of Sales Tax on Natural Gas.	332

CORPORATE

Circular No. 20 of 2005	15.11.2005	SECP modified the earlier circular 12 of 2004 dated 24.02.2004 whereby it is allowed to the limited and unlimited companies to hold the meeting of the Board of directors through video conferencing when the director are not available in Pakistan. Now, both tele/video conferencing allowed to facilitate and to promote the modern technologies. However, it is advised to keep the record of the relevant proceedings.	333
Circular No. 21 of 2005	18.11.2005	Specified the name of Chartered Accountancy firms who are eligible for the statutory audit of Modarabas.	334
Circular No. 22 of 2005	24.11.2005	Specific instructions in respect of market conduct of the life insurers issued in order to control the sale of misleading and deceiving policies to the public.	335

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
		These instruction are binding in addition to the insurance Ordinance and the rules pertaining to the market conduct of the life insurers.	
Circular No. 23 of 2005	14.12.2005	Directions in respect of compliance of International Standard on auditing 720 "Other Information in the documents containing auditing financial statements" for listed and their subsidiaries issued which is effective from 01.01.2006.	336
Circular No. 24 of 2005	19.12.2005	Instructions for the rotation of external auditor in case of listed and unlisted insurance companies. As per the said circular every above company required to change the external auditor after every 5 years.	337
Circular No. 25 of 2005	19.12.2005	Instruction issued for the maintenance and utilization of faculties like risk analysis, assets valuation and effective monitoring of receivables national leasing register and defaulter database produced by the leasing Association of Pakistan.	338
Circular No. 26 of 2005	27.12.2005	Instructions regarding reinsurance treaty arrangement for the year 2006 issued.	339
Circular No. 01 of 2006	09.01.2006	Guidelines issued for prudential regulation for consumer financing for non-banking finance companies (NBFC's).	340
Circular No. 02 of 2006	06.02.2006	Guidelines for the life insurers for the issuance of life insurance policies through withdrawal from recognized provident fund.	341
Circular No. 03 of 2006	10.02.2006	Previous Circular No.3 of 2005 dated 10.05.2005 is withdrawn whereby a company can hold election of directors before the expiry of the term of three years in the annual general meeting. Now the companies are directed to hold the election of directors immediately on expiry of the fixed term of three year in an annual and extra Ordinance general meeting.	342
Circular No. 04 of 2006	22.03.2006	Amendment made in the previously issued guidelines for the issuance of certificate of Musharika (COM) in respect of yearly updating of credit rating at least once in a year during the currency of the issue.	343

SYNOPSIS OF IMPORTANT CASE LAW

INCOME TAX

CITATION	SECTION	ISSUES INVOLVED
2005 PTD 2586 High Court Sindh, 2005 PTD 2599 High Court Lahore and 92TAX128	Proration of Expenses Repealed Income Tax Ordinance, 1979	It will be recalled that departmental officers started taking action of prorating expenditure between exempt income and taxable income in number of cases specially where exempt income was earned from Capital gains on shares of Public Limited Companies. The action was mainly taken on the ground that since there was no identifiable expenditure incurred for above two income, thus method of proration was adopted. In both the judgments, the Hon'ble Courts have approved the action of the department. The judgment of Full bench is also referred in Citation so that learned Members can study the point in detail.
2005 PTD 2513 High Court Sindh	Sec 107 of the Repealed Income Tax Ordinance, 1979	The issue whether an assessee will get the Tax credit u/s 107 on amount expended on installation has now been resolved by Hon'ble High Court of Sindh where their lordships after examining the provisions of Section 107 have held that the benefit of tax credit provided under this section is only available to the assessee over the amount invested by him for the purchase of plant and machinery and not over the expenses incurred by him for its installation.
2005 PTD 2534 High Court Sindh	Sec 32 of the Repealed Income Tax Ordinance, 1979	<p>In this case the books of accounts were rejected after acceptance of sales and purchases and Gross Profit was enhanced on the basis of history. It was argued on behalf of Tax payer that each assessment year is independent and the facts and circumstances prevailing in the each assessment year are to be considered independently until and unless the facts and circumstances are similar. It was further argued that after the acceptance of sales and purchases in an account case it would be a bad mathematics to enhance the GP rate.</p> <p>The Hon'ble High Court observed that the past history can be a good guide in those cases where no accounts have been maintained. Where the Assessing Officer has not doubted the veracity of entries on the debit and credit side, past history can never be acted upon. As admittedly the sales and purchases were verifiable, therefore, it was held that the learned Tribunal was not justified in upholding the enhancement of the GP rate by invoking the provisions contained in section 32(3) of the Income Tax Ordinance, 1979.</p> <p>Their lordships after examining the provisions of Section 32(3) observed that perusal of the above section shows that where no method of accounting has been regularly employed the method employed is such gains cannot be properly deducted there from or where subsection (2) applied, the assessee fails to maintain accounts fails to make payments or records transactions in the form or manner, as the case may be, prescribed under the said subsection, then only the income, profits and gains of assessee shall be computed on such basis and in such manner as the Deputy Commissioner thinks fit. Resort to the provisions contained in section 32(3) of Income Tax Ordinance, 1979 cannot be made until and unless the conditions precedent specified in the provision itself are fulfilled.</p>

Their lordships further observed that in the case under consideration the Assessing Officer has nowhere given any finding that the accounts have not been properly maintained or it has been maintained in such a manner that it is not possible to deduce the correct income, profits and gains. On the contrary, the Assessing Officer has held that the purchases and sales are verifiable. It was therefore, held that In these circumstances the learned Tribunal ought to have accepted the declared GP rate as well. It was further observed that It appears that the learned Tribunal failed to advert to the point that in the wake of acceptance of declared purchases and sales the enhancement of GP rate would be against principle of accounting and would be certainly a bad mathematics.

(2005) 92 TAX 230
High Court of Sindh

Sec 61, 62, 143
of the Repealed
Income Tax
Ordinance, 1979

In this case the assessee had filed normal Return of Income tax for the earlier assessments. However for the subsequent year statement under Section 143 was filed as it considered its income covered under the presumptive regime. The assessing officer without issuing any notice u/s 56 or 65, issued notices under Section 61 and 62. The said notices were challenged on the premise that the said notices are without jurisdiction. The contention was accepted by the Hon'ble Court and it was held that notice u/s 61 and 62 were void and without jurisdiction.

However, notwithstanding of above, the Hon'ble Court observed that department shall be at liberty to issue the notice under the relevant provision of law calling upon the petitioner to furnish the return if deemed fit and proper. It was further observed that if the department feels that there is any other manner of deciding the issue the department shall be at liberty to adopt the course in accordance with law.

2005 PTD (Trib) 2041
Tribunal

Sec 24 of the
Repealed Income
Tax Ordinance,
1979

In this case the Assessing Officer found that the assessee advanced loans to its employees at rates which are less than the rates at which loans are advanced to ordinary customers. The benefit provided to the employees was found to be falling under the ambit of excess perquisites under section 24(i) of the Income Tax Ordinance, 1979. He therefore worked out the addition under section 24(i). It was argued by the Tax Payer before the learned CIT(A) that difference of rate of interest charged from customers and from employees can be deemed as income under section 12(7) of the Income Tax Ordinance, 1979 but the provisions of section 12(7) have been suspended from 1-7-1985. Whereas the learned CIT(A) observed that the difference of interest as worked out by the Assessing Officer falls in the definition of perquisites as per section 16 of the Income Tax Ordinance, 1979 and any benefit provided within the terms and conditions of service does not mean that the same shall not be treated as perquisites and not charged to tax and the Assessing Officer in the absence of details of loans, had no alternative except to calculate the perquisites in the manner adopted by the Assessing Officer. The addition made by the Assessing Officer was, therefore, upheld.

The matter was challenged before the learned Tribunal where it was contended that there is no justification to hold that benefits such as concessional loans/advances to employees are hit by section 24(i) and that the claim of expenditure under section 23 is a pre-condition for disallowance under section 24 and in case of concessional loans no expenses were incurred and rather banks earned income by charging interest on such loans/advances. The learned Tribunal examined the provision of law and observed that bare reading of the section shows that any allowance or deduction under section 23 shall be allowed as allowance or deduction subject to condition as laid down in section 24 subject to limit of such allowance or deduction as has been provided in section 24(i). Thus, an expenditure is a pre-condition and this expenditure is subject to a limitation as provided under section 24(i). The primary condition for disallowance under section

24(i). The explanation under section 24(i) refers to the definition of perquisites as per section 16(2) of the Income Tax Ordinance, 1979 and section 16(1) deals with the determination of income of a person under the head of salary and perquisites as defined in section 16(2)(b) will be included in the salary income of a person receiving the benefit/perquisite. The benefit on account of a concessional loan could be brought into the ambit of taxation as deemed income under section 12(7) of the Income Tax Ordinance, 1979 but the provisions of section 12(7) have been suspended since 1-7-1985. The benefit on account of concessional loans can also be brought into the ambit of taxation under Rule 18 of the Income Tax Rules, 1982 but this benefit will be subjected to tax in the hands of the person receiving the benefits. It was observed that in the case in hand nothing has been claimed as expenditure and instead income has been shown on account of interest charged from the loans advanced to the employees. The decision cited by the assessing officer was held to be per incurrium. The addition u/s 24(i) was held to be not sustainable in law.

ITC No 128 of 1992 High Court of Sindh Un reported	Sec 22 of the Repealed Income Tax Ordinance, 1979	It will be recalled that the learned Tribunal had held in number of cases that an assessee whose income is exempt under second schedule , his income (loss) has to be computed under Section 22 of the Income Tax Ordinance, 1979. This view has been now approved by Hon'ble High Court of Sindh.
(2006) 93 TAX 60 High Court Lahore	Sec 135 of the Repealed Income Tax Ordinance, 1979	In this case, Order passed under Section 66A of the Repealed Income Tax Ordinance, 1979 was set aside and remanded back by the learned Tribunal to the Inspecting Additional Commissioner to make further investigation and inquiries. The said order was assailed before the Hon'ble High Court in Reference Jurisdiction. The Hon'ble Court after examining the provisions of Section 135(5) held that the Learned Tribunal is vested with the jurisdiction to vary and change any order in appeal before it and in this behalf can pass such order and the directions that would be necessary to meet the ends of law and justice. It was therefore, held that In the facts and circumstances no exception can be taken to the order.
92 TAX 321 TRIB	Sec 107 and 107AA of the Repealed Income Tax Ordinance, ,1979	Brief facts of the case are that a Tax payer claimed Tax Credit under Section 107AA when it invested in the purchase of plant and machinery, whereas the finance involved was arranged through Leasing Company Under sale and lease back arrangements under which the Tax Payer was to sell the machinery to Leasing Company thereafter the said machinery would be leased out to the Tax Payer who paid the lease installments and finally the Tax Payer would buy-back the said machinery from the leasing company. The assessing officer disallowed the tax credit claimed u/s 107 AA on the ground that unlike section 107 there was no explanation available u/s 107 AA whereby tax credit could be extended to lease assets. The matter was finally decided by the learned Tribunal which has held that no distinction can be drawn between an asset, which is acquired through direct purchase or acquired through lease-finance. As such for the purposes of section 107-AA no such distinction can be drawn and Tax credit was extended to the assets acquired through Lease arrangements.
(2005) 92 TAX 288 Trib Tribunal	Sec 65 of the Repealed Income Tax Ordinance, ,1979	In this case while invoking the provisions of Section 65 permission was sought instead of previous approval. The learned Tribunal after examining the connotation of two terms and record held that there was no previous approval which was mandatory. The assessment was therefore annulled.

(2006) 93 TAX 197 Supreme Court of Pakistan	Sec 240 and SRO 633(I)/2002 dated 14.9.2002 - Income Tax Ordinance,2001	It will be recalled that Central Board of Revenue, Islamabad, issued a Notification S.R.O.No.633(I)/2002 on 14.9.2002, in purported exercise of powers conferred by Section 240 of the Income Tax Ordinance, 2001, whereby certain amendments were made in Sections 114, 122, 137, 147, 161, 221 and 239 of the Ordinance. The said Notification was declared to be without lawful authority and of no legal effect by the Hon'ble Lahore High Court in several Petitions. The Hon'ble Supreme Court after examining the scope of provision of Section 240 has approved and confirmed the ratio of judgment of Hon'ble Lahore High Court. Thus it has been held that amendments made through said Notification are without lawful authority and of no legal effect.
2006 PTD 1 Lahore High Court	Sec 30 read with Clause 176 of the Second Schedule to the Repealed Income Tax Ordinance,1979	It will be recalled that in one of the case of Power Projects, the Hon'ble Supreme Court had held that income earned out of deposit of Share Capital was chargeable under Section 30. In that case, the Tax Payer had not earned any income from Generation of Power. Please see 2004 PTD 2255. A similar issue arose for determination before the Hon'ble Lahore High Court where the Power Project company had not started its operations and earned income from interest from the amounts deposited in foreign country. The Hon'ble Lahore High Court has held that such interest was not exempt from tax under Clause 176 of the Second Schedule to the Income Tax Ordinance, 1979.
2006 PTD 14 Peshawar High Court	Sec 50(4) read with SRO 586(I)91 dated 30.6.1991 Sec 52 and 86 of the Repealed Income Tax Ordinance,1979	In this case, assessee was declared an assessee in default on alleged non deduction of tax at source on payment made to the shopkeepers from whom the company had purchased the food grains and pulses. The learned Tribunal had given benefit to the Tax payer on the basis of Notification No SRO 586(I)91 dated 30.6.1991 in which deduction was not required to be made in the case of agricultural produce. The Hon'ble High Court has confirmed the decision of the learned Tribunal.
2006 PTD 460 High Court of Sindh	Sec 24(g) of the Repealed Income Tax Ordinance, 1979	In this case, the Hon'ble High Court after examining the provisions of Section 24(g) of the Repealed Income Tax Ordinance,1979 and definition of term "Fund" has held that provision for gratuity is only admissible when the Fund is approved.
2006 PTD 333 High Court of Sindh	Section 136 of the Repealed Income Tax Ordinance, 1979	In this case, the learned Tribunal had dismissed the appeal of the Tax Payer for the reason that assessee had accepted the finding of the assessing officer in the preceding years and had not filed any appeal against such finding. The Tax payer argued before the Hon'ble High Court that not advisable to spend more money for saving lesser tax. It was contended that there was no resjudicata in Income Tax law and reliance was placed on the judgment of Hon'ble Supreme Court of Pakistan reported in PLD 1992 SC 562. The Hon'ble High Court after examining the facts and legal position accepted the contention and has held that order of learned Tribunal was not sustainable in law. (The learned members are requested to read the entire judgment to understand the issue involved.)
2006 PTD (Trib) 827 Tribunal	Section 13 of the Repealed Income Tax Ordinance, 1979	In this case, addition under Section 13(1)(d) was deleted in view of the fact that mandatory approval was not obtained.

2006 SBLR (Trib) 174 Tribunal	Section 23 and 62 Repealed Income Tax Ordinance, 1979	In this case, various additions out of Profit & Loss Account were made without issuance of notice under Section 62. The additions were assailed in first Appeal. The learned Commissioner of Income Tax (Appeals) held that mandatory provisions have been violated and are not sustainable in law. However, he set aside and remanded back the matter to the Deputy Commissioner of Income Tax. The said set aside addition was challenged in the Tribunal and the learned Tribunal on the basis of various orders passed earlier held that correct course for learned Commissioner of Income Tax was to delete the addition instead of setting aside. The other issue was that financial charges were disallowed for the reason that since there was introduction of fresh capital, there appears to be no justification the claim of financial charges. It was argued before the learned Tribunal on the basis of judgment of Hon'ble Supreme Court of Pakistan in 1992 PTD 954 that entire observation were on the advisability and possible contention of prudent business and Deputy Commissioner of Income Tax have no where held that borrowed amount was not utilized for business purposes. The learned Tribunal accepted the contention on the basis of the judgment of Hon'ble Supreme Court of Pakistan and deleted the financial charges.
(2006) 93 Tax 238 Trib Tribunal	Sec 22 & 23 of the Repealed Income Tax Ordinance, 1979	In this case, the taxpayer claimed loss on account of destruction of Stock in trade by fire. The learned Tribunal after examining the facts and law, allowed the claim.
2006 PTD 1027 High Court of Sindh	Rule 7 (b) of the Third Schedule to the Repealed Income Tax Ordinance, 1979	It will be recalled that the in one of the cases reported as 1993 PTD 1175, the learned Tribunal had explained the concept of a slump transaction and further held that the Tax payer was not entitled on the facts of the case as it was found that the Transaction in that case did not qualify the parameters of a slump transaction. The matter was contested before the Hon'ble High Court of Sindh. The Hon'ble Court agreed with the view of learned Tribunal and it was held that the application under Section 136(2) was held to be arising out of question of fact and said application was therefore dismissed.
2006 PTD 1061 High Court of Sindh	Section 55 of the Repealed Income Tax Ordinance, 1979	In this case the Hon'ble High Court of Sindh after examining the provisions of Section 55 has held that opinion given by the Tribunal that person drawing exempt income is not required to file return of income and if such return is filed it would not be valid return and shall not give jurisdiction to the assessing officer to initiate assessment proceedings on the basis thereof, was not a correct opinion. The rationale given is that the exemption pre-supposes the liability and merely grants immunity from payment of tax.
(2006 93) Tax 294 Trib Tribunal	Sec 52A of the Repealed Income Tax Ordinance, 1979	In this case learned Tribunal has held that the provision of Section 52A inserted through Finance Act 1999 is prospective in nature and can only be applied prospectively from the date of insertion relating to Financial year 1999-2000 relevant to the assessment year 2000-2001.
(2006) 93 Tax 284 (Trib) Tribunal	Sec 153 of the Income Tax Ordinance,2001	In this case a very important issue has been decided to the effect that provisions of section 153 are only applicable to an association which is constituted by or under law . It therefore means only such AOP's become withholding agent which are constituted by or under law i.e. they have been formed by specific enactment or statute.
2006 PTD 734 High Court of Sindh	Sec 114,115 and 122 of the Income Tax Ordinance, 2001	In this case, the Hon'ble High Court of Sindh has examined in detail the provisions of Section 114, 115, Sub-Section (5) and (5A) of the Income Tax Ordinance, 2001. It has been held that provisions of Section 122(5) cannot be invoked on a statement filed under Section 115(4). It has been further reiterated that provisions of Section 122(5A) cannot be invoked to the assessments framed prior to 1.7.2003. The learned Members are requested to read the judgment in extenso to understand the ratio of judgment.

SALES TAX

2005 PTD 2234 Supreme Court of Pakistan	Sec 38,39 and 40 of the Sales Tax Act, 1990	<p>The facts of the case are that Sales Tax Department made search and seized the record of the Tax payer, which action was held to be illegal and void by Hon'ble High Court of Lahore and directions were given to the Collectorate to return the said record to the said Taxpayer with a further direction that none of these material, records, books of account be used in adjudication proceedings against the respondents or to create demand based thereupon in any manner. The department filed a Constitution Petition for Leave to Appeal before the Hon'ble Supreme Court against said judgment. The Hon'ble Supreme court after examining the provisions of Sales Tax Act,1990 observed that provisions of sections 38, 40 and 40-A do appear to allow the competent officers, free access to the relevant record and to authorize them to carry out searches and in certain conditions even without warrants.</p> <p>The Hon'ble Supreme Court observed that the powers conferred by these provisions and others on the competent officers in the said connection require an authoritative pronouncement and it also needs to be determined whether these provisions could be said to be an encroachment on any alleged Constitutional guarantees especially when all Constitutional guarantees are subject to reasonable restrictions imposed by law.</p> <p>Their Lordships further observed that they have also not been able to lay their hands on any provision either in Cr.P.C. or in the Qanun-e-Shahadat Order, 1984 or in any other law which prohibited use or admissibility of a piece of evidence in judicial proceedings if the proceedings which had led to the collection of such incriminating pieces of evidence suffered from some hyper technical or even a technical infirmity. Therefore, the question whether the learned High Court could prohibit the direct or indirect use of any material in any proceedings under the Sales Tax Act, 1990 which material had been collected in pursuance of an exercise, which allegedly suffered from some technical defect also requires consideration. The Hon'ble Supreme Court, therefore, granted Leave to appeal to consider all the aspects of the matter and the operation of the impugned judgment announced on 18-10-2004 has been suspended.</p>
(2005) 92 Tax 221 High Court Peshawar	Sec 2, 7 and 8 of the Sales Tax Act, 1990	<p>In this case question arose as to whether the component parts of machinery and lubricants used in machinery for production of textile yarn was integral part of the end product and that the Tax payer was entitled to claim input tax. The Hon'ble Court after examining the relevant SRO's and various judgments answered the question in affirmative.</p>
93 TAX 31 High Court of Sindh	Sec 2(33),(35) and (46) of the Sales Tax Act,1990	<p>In this case a short point involved was whether the charges received for installation of the generators sold by the respondent / Tax Payer are to be included in the value of supply and the incidental question was, "whether the rendering of such services is included in taxable activity?". The learned Tribunal had held that receiving of installation charges is not to be included in the value of supply. The matter was assailed before the Hon'ble High Court. The Departmental Counsel referred to the definitions contained in section 2(33), (35) and (46) of the Sales Tax Act, 1990.</p> <p>The Hon'ble High Court observed that the Departmental Counsel was not able to show that the receiving of installation charges could be included in the value of supply by any stretch of imagination in the value of supply in accordance with the law as prevailing in the year, 2000. It was further observed that only substantial questions of law are to be entertained by the Court. As no substantial question of law requiring interpretation has been shown, therefore, the appeal was dismissed in limine.</p>

2006 PTD (Trib) 98 Tribunal	Secs 3, 11, 33, 34, 36, 46 of the Sales Tax Act, ,1990	In this case, department taxed the value of supply which was lost as wastage. The contention was made by the tax payer that reasonable wastage occurs in the trade. The learned Tribunal after examining the issue in detail with reference to wastage percentages held the action of the department was not sustainable in law.
PTCL 2005 CL 821 Tribunal	Sec 46 of the Sales Tax Act, ,1990	In this case the learned Tribunal has examined the scope of Review under the Sales Tax Act, 1990.
2006 PTD 310 High Court of Sindh	Sec 46 of the Sales Tax Act, ,1990	In this case, their lordships of Hon'ble High Court has elaborated on the advisory jurisdiction under Section 46. It will be worthwhile to reproduce -the observations in extenso for better understanding.

"We are not persuaded to agree with the submission for the reason that it is specifically provided in section 47 of the Sales Tax Act, 1990 that an appeal shall lie to High Court in respect of any question of law arising out of an order passed by the Tribunal under section 46. It is advisory jurisdiction of this Court and is not to be equated with a civil or criminal appellate jurisdiction in which this Court does not exercise advisory jurisdiction but the normal appellate jurisdiction. Whenever any Court exercises normal appellate jurisdiction it can exercise all the powers which are vested in forums below for the reasons that the appeal is continuation of the original proceedings. However, while exercising advisory jurisdiction the provisions of law under which the jurisdiction is exercised is to be kept in view and the law clearly provides that an appeal shall lie in respect of any question of law arising out of an order under section 46 of the Act, passed by the Appellate Tribunal. It nowhere provides that any question of law arising out of the transaction between the two parties shall give right of appeal to a party or jurisdiction to this Court. Subsection (5) of the section 47 of the Act is very clear on the point that the jurisdiction exercised by this Court is advisory in nature. It is provided therein that upon hearing of appeal High Court shall decide the question of law raised therein and shall deliver judgment thereon specifying the grounds on which such judgment is based and shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment. There is no ambiguity in law which provides that when appeal is preferred before this Court the effect is that the appeal before the Tribunal shall not be deemed to have been finally disposed of and shall be finally disposed of when the opinion of this Court is delivered in exercise of advisory jurisdiction where after the Tribunal shall pass such orders as are necessary to dispose of the case in conformity with such judgment. If a plea is not raised before a Tribunal it shall not be deemed to be pending before the Tribunal and in such situation there is no question of deciding the case in accordance with the judgment of this Court. The Tribunal can decide the case in respect of the issues over which it has seisin and not the issues which were neither raised before it nor were taken cognizance of its own. The plea taken by Mr. Aziz A. Shaikh is applicable to the civil and criminal appeal where this Court exercises the normal appellate jurisdiction and not the advisory jurisdiction. In exercise of normal appellate jurisdiction this Court can itself set aside the order appealed against or modify the same or amend the same or remand the case for purpose specified in the order. But in case of advisory

jurisdiction, the final order is to be passed by the Tribunal itself in conformity with the judgment of this Court which shall decide the question of law raised in the appeal in accordance with the provisions contained in section 47(1), which provides that it shall arise out of an order under section 46, specifying the grounds on which it is based. The scope of advisory jurisdiction is limited to the extent of expressing opinion whether the finding given by the Tribunal is in accordance with the law or otherwise. In case there is no finding of the Tribunal there is no question of giving any opinion in negative or affirmative.”

2006 PTD 330
High Court Lahore

Sec 2(46) of the
Sales Tax Act,
,1990

In this case the Department challenged the judgment of the learned Tribunal on the ground that the learned Tribunal was wrong in directing the assessment of the valuation of the taxable supplies made by the respondent company by the Valuation Committee constituted under section 2(46)(e) of the Sales Tax Act, 1990. The Hon'ble High Court after examining the question proposed held that the forum of the Valuation Committee was created by an amendment of a procedural nature in the Sales Tax Act, 1990 in the year 1996. Such forum is meant to facilitate the determination of the controversies between parties on the question of valuation. Being a procedural amendment it applies to all pending cases. There is no change in the substantive rights of the parties pursuant to the said amendment and therefore no objection on the ground of prejudice by retrospectively is made out. Resultantly the direction given by the learned Tribunal in the circumstances of the case both lawful as well practicable. It was further observed that the Department shall implement the same in accordance with law. The appeal was dismissed.

2006 PTD 336
High Court Lahore

Sec 3,6,22,23,26,
33 of the Sales
Tax Act, 1990

In this case an appeal under Section 47 was filed by the Tax payer who was charged to have paid fixed sales tax after due dates in the two years involved, namely, 1994-95 and 1995-96. The delayed payments having almost been admitted, the appellant was charged with the contravention of sections 3, 6, 22, 23 and 26 of the Sales Tax Act, 1990. Accordingly it was found liable to pay additional tax under section 33 to the tune of Rs. 2,80,740 along with surcharge to be calculated at the time; of deposit. Also a penalty of Rs.5,000 was imposed under section 33(4) of the Act. The appellant claimed that having already paid the whole of the amount of fixed sales tax its case was covered under the amnesty S.R.O. No.575(I)/1998, dated 12-8-1998 which was not accepted by the Revenue authorities on the ground that the principal amount of tax having been deposited by the manufacturer /registered person before the issuance of the said S.R.O. dated 12-6-1998 it was not entitled to the amnesty for payment of additional tax and penalty contemplated in that S.R.O. The learned Tribunal did not accepted the contention and maintained the orders of the Department. The Hon'ble High Court after examining the issue held that said SRO was applicable to the appellant. Their Lordships observed that it needs to be noted that the amnesty contemplated in that S.R.O. as per paras. 2 and 3 thereof was also available to cases of taxpayers pending in appeals. If the interpretation of that S.R.O. is made by the Revenue authorities as well as the Tribunal is accepted then it is likely to create an anomalous situation. It is that whereas the persons who had already paid the amount due will be deprived of the amnesty while those who will pay that amount after the issuance of S.R.O. 575(I)/98 on 12-6-1998 will be spared of the additional tax and penalty. In other words a person who had already paid the due tax to the public exchequer will be burdened with additional tax and penalty while the one who does so after issuance of that notification and having withheld the amount of the tax due from him in the meanwhile will be rewarded by allowing exemption from penalty and levy of additional tax. This could never be the intention of any superior or subordinate legislation. A person placed in similar factual situation cannot be discriminated merely for the reason that he has first to be a continuous defaulter on a particular date of grant of amnesty in order to avail the same. The appellant having paid the fixed tax before the issuance of the said S.R.O. but before the issuance of show-cause notice was clearly entitled to the benefit of the amnesty contemplated in the S.R.O. To hold otherwise would be negation of justice fair equal protection of law.

2006 PTD 1137 2006 PTD 116	Sec 2 (33) of the Sales Tax Act, ,1990	In this case, the tax payer claimed in input tax on the transaction of processing of goods by other party on fix processing charges. The Hon'ble High Court after examining the scope of tem "Supply" as contained in Section 2(33) and after examining the facts of the case was pleased to hold that in put tax claimed by the tax payer was not warranted under law.
2006 PTD 1132 Supreme Court of Pakistan	Sec 34 of the Sales Tax Act, ,1990	In this case additional tax under Section 34of the Sales Tax Act 1990, was imposed for the reason that it was alleged that the tax payer had allowed trade discount on taxable supplies without charging sales tax on the basis of retain price as fixed in accordance with provisions of Section 4 of Central and Salt Act 1944. The Tax payer was given relief by Hon'ble Lahore High Court which was assailed before the Hon'ble Supreme Court of Pakistan. The Dept. contention was that since the tax payer was found responsible for short payment of Sales Tax. The Additional Tax and Surcharge in view of S.R.O. 1136(l) 1990 read with Section 34 and 36 of the Sales Tax Act. On the other hand the tax payer submitted that their was nothing on record to show that the short payment of sales tax was willful or deliberate. The Hon'ble Supreme Court of Pakistan has examined Section 34 of the Sales Tax Act, 1990 (as it stood at the relevant time). The Hon'ble Supreme Court of Pakistan has held that Section 34 clearly indicate that in case of failure of a registered person to pay sales tax within time. He shall also be liable to pay additional tax and surcharge their lordships have further observed that the liability being not automatic would be determine by the appropriate authority as to whether or not there was any reasonable ground for default or sales tax which could be considered to be willful and deliberate. The discretion is vested to the authorities. Their lordships further held that there was no materiel available on record that the short payment of sales tax was malafide or willful Act of omission of the Tax payer. Therefore the Petition was dismissed.
2006 PTD 816 High Court of Sindh	Sec 34 of the Sales Tax Act, ,1990	In this case, taxpayer being Pharmaceutical Company was called upon to pay allegedly short payment of Sales Tax along with Additional Tax. The main contention of the Petitioner that Sales Tax amounted to increase in minimum retail price. However, it was admitted that petitioner were liable to pay amount so called to the Government in view of the clear provision of Section 3(b).
However, additional tax was assailed for the reason that same was deposited by taxpayer under Amnesty Scheme. The Hon'ble High Court allowed the petition to the extent of additional tax.		
2006 PTD Trib. 1096 Tribunal	Sec 3, 33 and 34 of the Sales Tax Act, 1990	In this case Sales Tax along with additional tax was levied by the department on the basis of Tax papers turnover declared to the Income Tax Department on advalorem basis but paid the sales tax on fixed tax basis. The learned Tribunal after examining the issue at length held that denying the fixed tax facility was not justified and tax payer was entitled to facility of fixed sales tax.
In this case it was also held that assessee was entitled to input tax deduction from their output tax liabilities if the gas bills were in the name of registered person and they had used the gas in the taxable activity within the compound where items were manufactured however, if gas was consumed out side the manufacturing compound of the tax paper they will not be entitled to such deduction.		

2006 PTD (Trib) 981 7, 13 and 34 of Sales Tax Act, ,1990

In this case audit team alleged that the taxpayer claimed and received refund of tax against the sale of Tractors which according to audit team was not permissible since sale was for commercial purposes and not for agriculture purposes in terms of SRO 839(l)/98 dated 23.7.1998 read with item No.49 of the sixth Schedule to the sales Tax Act, 1990. The learned Tribunal after hearing the party observe that admittedly the Transaction Tractor supplied by the Tax payer were agricultural Tractor and no evidence to contrary to the record was placed. It was observed that the audit objection was based on mere presumption that since the buyers acquired Tractors in Commercial quantity from the Tax payer and that audit observation that they were put to no agricultural use. The Tax payers' contentions was that there being no mechanism under law empowering them to check the use of Tractor after sale to the buyers. The learned Tribunal has observed that no evidence has been brought on record by the Department that agriculture Transaction in question were not being used for agricultural purposes by the respective buyers it was therefore held that on mere presumption tax payer cannot be charged with heavy tax liability when no evidence on record was available.

PTCL 2006 CL 169 Tribunal Sec 7 & 8 of the Sales Tax Act, ,1990

In this case, the learned Tribunal has held that in the case of hotels and restaurants, the deduction of Input Tax is not restricted to food items only. Such entities are entitled to deduction of Input tax tax paid on goods that have been used for providing taxable services.

WEALTH TAX

2006 PTD 271 Supreme Court of Pakistan Sec 17 of the Wealth Tax Act, ,1963

In this case point of limitation of Notice under Section 17 was raised for the first time before the learned Income Tax Appellate Tribunal, which accepted the point and cancelled the assessment made. The department assailed the said decision before the Hon'ble High Court which was also dismissed. The Department took the matter to the Hon'ble Supreme Court on the grounds that a grave and serious illegality was committed by the Tribunal in entertaining the question of limitation which was not raised before the lower forums and for the first time it was raised before the Tribunal. It was submitted that the Tribunal in allowing the question of limitation to be raised before it during the course of arguments violated Rules 10 and 14 of Income Tax Appellate Tribunal Rules, 1982.

The Hon'ble Supreme Court did not accept the arguments and observed that contentions raised and arguments advanced do not carry weight in view of the pronouncements made by the Hon'ble Supreme Court in large number of cases to the effect that the question of limitation being a matter of statute and the provisions thereof being mandatory, same could not be waived and even if waived could be taken by the party waiving it and even by the Court itself.

It has further been observed that matter of limitation would not be left to pleadings of parties but a duty is imposed on Court itself to decide whether the proceedings have been filed within the period of limitation. It was further observed on the basis of other case decided by the Hon'ble Supreme Court that from the pronouncements made by this Court in the aforesaid case the undeniable conclusion/inference which can be had is that a higher forum would be competent to examine the question of limitation in filing the proceedings before the original lower forum, if such issue are raised and agitated before it.

In the present case question of limitation was raised and agitated before the Tribunal and the Tribunal had discussed the same at length. It was observed by Hon'ble Supreme Court that in view of the pronouncement of this Court the Tribunal was justified in doing so and violation of Rules 10 and 14 of Income Tax Appellate Tribunal Rules 1982 would in no way render the action and the finding of the Tribunal as illegal or contrary of law.

2006 PTD 324 High Court of Sindh	Sec 27 and 35 of the Wealth Tax Act, 1963	In this case, the Tax payer filed rectification applications u/s 35 of the Wealth Tax Act, 1963 and on its rejection filed appeal before the Hon'ble High Court under Section 27. The Hon'ble High Court dismissed the appeals on the ground that no question of law arose out of rectification order when the Tax payer had not filed the appeal against the appellate order.
2006 PTD 476 High Court of Sindh	Section 27 of the Wealth Tax Act, 1963 Read with Section 5 and 14 of the Limitation Act, 1908	In this case, the Hon'ble Court has examined in detail, the provisions of Section 14 of the Limitation Act, with reference to filing of appeal in a wrong forum. The Members are requested to read this judgment in detail to fully understand the concept embodied in Section 14 of the Limitation Act.
2006 PTD 1000 High Court of Sindh	Clause 7 of Second Schedule to the Wealth Tax Act, 1963	In this case the Hon'ble High Court of Sindh has held that exemption under clause 7(iii) of Second Schedule to the Wealth Tax Act, 1963 was confined to first conversion of FEBC.
2005 PTD 2583 High Court Lahore	Sec 24 of the Wealth Tax Act, 1963	In this case, one bench of the learned Tribunal had taken a contrary view in presence of judgment of a bench of equal strength. The Hon'ble High Court set aside the judgment and has observed that the matter should be referred to the learned Chairman of the Tribunal for constituting a Full Bench. Thus both the decisions were set aside and their lordships desired that the Full Bench or a larger Bench be constituted as the learned Chairman may consider appropriate which may not comprise any of the members of the two Division Benches who had earlier heard and disposed of the appeals.

CUSTOMS AND EXCISE

2006 PTD 978 High Court of Sindh	Sec 32 of the Customs Act, 1969	In this case the Hon'ble High Court of Sindh has held that service of notice under Section 32 of the Customs Act, 1969 is a condition precedent for initiation of proceedings for misdeclaration by the importer. It has been further held the service of notice is a sine qua non, in the absence whereof the Custom official cannot acquire jurisdiction for initiating any proceedings for any misdeclaration, misstatement or evasion of tax.
2006 PTD Trib 1056. Tribunal	Sec 2 of Central Excise and Salt Act, 1944	In this case Central Excise Duty was imposed on the process converting Tea and Filter paper into Tea bags. The arguments put forth was that the process by which filter paper is converted by the Tax papers into Tea bags does not fall within the definition of word "manufacture" as defined under Sub-section 25 of Section 2 of the Central Excise and Salt Act, 1944. The learned Tribunal after examining thoroughly the connotation of word manufacture approved the contention and it was therefore held that Department's action to treat Tea bag as an act manufacture was wrong as in fact no independent product ever came into existence from the process of inserting the paper with the blended Tea. The appeal was accordingly allowed.

GENERAL LAW AND INTERPRETATION

2005 SCMR 1785 Supreme Court of Pakistan	Interpretation of Statute	In this case the Hon'ble Supreme Court has held that in absence of a stipulation to the contrary any change in law affecting substantive rights has to have prospective effect.
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2006 PSC 183 Supreme Court of Pakistan	Article 2A,9,18 and 25 of the Constitution of Pakistan	In this case, the Hon'ble Supreme Court has elaborated the following articles of Constitution. Article 2A, 9, 18 and 25. The expression "life", "freedom of Trade", "Business or Profession" and "Reasonableness of Restriction" has been further elaborated.
PLD 2006(KAR) 126 High Court of Sindh	Limitation Act,1908	In this case, the Hon'ble High Court of Sindh has re-iterated the well settled principles of condonation of delay under Section 3 & 5 of Limitation Act and has also elaborated the expression "sufficient cause". It has been held that under Section 5, legislature has given exemption to the party who have sufficient cause could not approach the Court within time fixed by law. It was further observed that expression "sufficient cause" used in said Section should be given liberal construction so as to advance substantial justice. However, it was also observed that discretion given has to exercise judicially and not arbitrarily. It was observed that Section 3 of the Limitation Act provides that sub Section 4 to Section 25, every suit instituted Appeal preferred and application made after the period of limitation prescribed in the First Schedule shall be dismissed even if limitation has not been set up as defense. It was further observed that it is by now settled that party who is seeking indulgence of the Court for condonation of delay has to explain satisfactorily each and every day of delay and further that delay has been caused for the reason beyond its control.
PLD 2005 Kar 591 High Court of Sindh	Interpretation of Statute	The Hon'ble High Court has observed in this case that the courts while interpreting the law will not read anything which is not provided. The law has to be interpreted as it stands of the statute book.
2006 CLD 85 High Court of Sindh	Interpretation of Statute	Principle of ejusdem generis explained. This doctrine means where special words immediately followed or closely associated with general words, their meaning is limited to preceding words.
2006 CLD 191 High Court of Sindh	Interpretation of Statute and Company Law	In this case, the Hon'ble High Court of Sindh has elaborated situation in which Courts have lifted the corporate veil.
PLD 2006 (KAR) 74 High Court of Sindh	Interpretation of Statute	In this case, the Hon'ble High Court of Sindh has elaborated the well settled principle of interpretation of statutes that the same under the statutes must be consistent with statutes under which they are made and that rules cannot repel or contradict express provision of statutes from which they derive their authority. It was further held that it is equally well recognized principle that if the required framed statutes are in excess of the provisions of such statutes or are in contravention or inconsistent or in repugnant to any well established principle statute, such require must be regarded as ultra varies of the statute and cannot be given effective.
PLD 2006 (SC) 53 Supreme Court of Pakistan	Interpretation of Statute	In this case, the Hon'ble Supreme Court of Pakistan has held that Court can interpret the provision of law but can not change or substitute such provisions and also can not go beyond the wisdom of law.
PLD 2006 (KAR) 108 High Court of Sindh	Trust Act, 1882	In this case, the Hon'ble High Court of Sindh has examined the power of the Trustee of a Trust to convey property. Their Lordships have examined in detail the requirements of law. The members who are interested in such subject, could seek guidance from above judgment.
PLD 2006 SC 189 Supreme Court of Pakistan	Gift	In this case, the gift of Hiba-Bil-Iwz, the Hon'ble Supreme Court of Pakistan has elaborated essential ingredients of gift by Hiba-Bil-Iwz.

2006 SCMR 705
Supreme Court of
Pakistan

Discretion and
Judicial Review

In this case it has been observed by the Hon'ble Supreme Court of Pakistan that it is fundamental principle that an authority enjoying the discretionary powers, exercises the same without any guideline but at the same time such authority must not exercise the discretion in an arbitrary and capricious manner. It may not be obligatory for the concerned authority to exercise the discretion in a particular manner but exercise of such power in an unreasonable manner is not proper and in such a case the order passed in discretionary jurisdiction is not immune from judicial review of the Superior Courts.

It is well-settled that word 'may' is discretionary and enable word and unless the subject-matter shows that the exercise of power given by the provision using the word 'may' was intended to be imperative for the person to whom the power is given, it might not put him under an obligation to necessarily exercise such power but it is capable of being construed as referring to statutory duty, it will not be entirely for such person to exercise or not to exercise the power given to him under the law. The use of word 'may' in the statute in the plain meaning is to give discretion to the public authorities to action their option in the manner in which such authorities deem proper but if the public authorities are authorised to discharge their functions in their option in a positive sense, the word 'may' used in the provision would be suggestive of conveying the intention of legislature of imposing an obligation.

The word 'may' usually and generally does not mean 'must' or 'shall' but it is always capable of meaning 'must' if the discretionary power is conferred upon a public authority with an obligation under the law. The word 'may' is not always used in the statute with intention and purpose to give uncontrolled powers to an authority rather oftenly it is used to maintain the status of the authority on whom the discretionary power is conferred as an obligation and thus, the legislative expression in the permissive form, sometimes is construed mandatory. It is, however, only in exceptional circumstances in which a power is conferred on a person by saving that he may do a certain thing in his discretion but from the indication of the relevant provisions and the nature of the duty to be done, it appears that exercise of power is obligatory. This is an accepted principle of law that in a case in which the statute authorizes a person for exercise of discretion to advance the cause of justice, the power is not merely optional but it is the duty of such person to act in the manner it is intended.

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