

E-News & Views

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

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FROM THE DESK OF THE PRESIDENT

Dear Members,

It gives me immense pleasure in writing my message at the culmination of over half year of my term of office. We have continued with two way strategy and have been highlighting core issues to FBR and at the same time trying to provide opportunity to our members to be more acquainted with the knowledge of tax laws and other important subjects. Different CEP programs and currently launched Professional Development Program (PDP) are examples in this regard.

We as a nation are still facing socio-economic, political and security related problems, some of which are at present prevailing in their high intensity. Energy crisis, flood driven economy and managing forex balances in view of the recurrent commitments, have already challenged the status of feeble economy. We are at the threshold of seeing hyper-inflation. We still need to be more mature nation and work together selflessly as to how we can protect and strengthen our national interest and goals. From economic perspective, one of the possible ways to overcome this challenge is to have a proper tax policy under which everybody contribute as per their share, considering it as a service to the other people of Pakistan, otherwise we don't have any other option except to continue enhancing our debts many folds by taking further loans. Which in turn add up to our economic burden and do not allow any other option except to abide by reform agenda of lenders which in turn put compounding burden to the common men in the shape of increasing utility charges and reduction of subsidies. Therefore, being tax professionals we need to stand-up and create awareness for tax culture and at the same time raise voice against any waste of the tax revenue by the Government in any undue projects and programs.

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

Looking forward to work with you all

Syed Wasimuddin Hashmi

FROM THE DESK OF THE CONVENOR

Dear Fellow Members,

It is indeed an honour as well as pleasure for me that I have been entrusted with the task of compiling and organizing the publication of E-News & Views and to head the sub-committee formed for this purpose. For this, I am indebted to the leadership of this august Bar.

I feel immense pleasure in handing over you the first issue of E-News & View for the year 2014. In this issue we have compiled all the Circulars, Notifications, General Orders etc. concerning the revenue laws of the country issued till July 2014. Apart from these, important case law dealing with Sales-tax, Customs, Federal Excise and Direct tax is also part of this publication.

I am sure that you will find this issue of much help to you in dealing with the day-to-day issues that are being faced by us during performance of our obligations.

Your suggestions however, are always welcome in our pursuit in improving the readership as well as quality of this publication.

With this, I would like to thank my team members of E-News & Views Committee for their valuable input and continued untiring efforts and support. I also thank the Almighty for his blessings that enabled us to issue this publication.

Yours in service,

Zubair Abdul Sattar Mesia

NOTIFICATIONS, CIRCULARS AND GENERAL ORDERS

SALES TAX ACT, 1990

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

NOTIFICATION/ CIRCULAR/ GENERAL ORDER REFERENCE	ISSUES INVOLVED
SRO 79(I)/2014 January 31, 2014	Chapter II of Sales Tax Rules, 2006 relating to Sales Tax Registration Rules was amended
C. No. 3(3)ST- L&P/2014 - 26035 January 18, 2014	Amendments made through SRO 79(I)/2014 were explained vis-à-vis introduction of New Risk-Based Sales Tax Registration Procedure
C.No.1/23-STB/2010 (pt)/30303-R February 27, 2014	Instructions issued regarding Writ Petitions filed by various taxpayers before the Hon'ble High Courts challenging the vires of section 2(22A) of the Sales Tax Act, 1990 relating to adjustment of provincial input tax against federal output tax
SRO 140(I)/2014 February 28, 2014	Amendments made in the Federal Excise Duty and Sales Tax on Production Capacity (Aerated Water) Rules, 2013
SRO 141(I)/2014 February 28, 2014	Consequential to the amendments made in the Federal Excise Duty and Sales Tax on Production Capacity (Aerated Water) Rules, 2013, certain amendments were made in SRO 490(I)/2004 dated 12 June 2004 relating to admissibility of input tax
General Order No. 27 of 2014 March 18, 2014	Clarification regarding levy of 2% extra tax on the supply of auto parts & accessories, tyres & tubes and storage batteries by manufacturers of such goods directly to OEMs/ automobile manufacturers
SRO 212(I)/2014 March 26, 2014	Adjustment for input tax paid on services under provincial sales tax laws was allowed against output tax paid under Sales Tax Act, 1990 with effect from July 1, 2013
SRO 236(I)/2014 March 31, 2014	Value of supply to CNG consumers notified as the "Total Value Added Cost" of CNG as notified, from time to time, by the Oil and Gas Regulatory Authority
SRO 338(I)/2014 May 02, 2014	Imposition of regulatory duty @25% on the export of potatoes and withdrawal of customs duty, sales tax and withholding taxes on import of potatoes for the period 5 May 2014 to 31 July 2014
SRO 420(I)/2014 June 04, 2014	The rate of sales tax on import of finished goods relating to certain export oriented sectors (such as leather, textile, etc.) covered by SRO 1125(I)/2011 has been enhanced from 5% to 17%
SRO 421(I)/2014 June 04, 2014	Amendments in Sales Tax Special Procedure Rules, 2007 relating to steel melting units, steel re-rolling units, composite units of melting and re-rolling, etc.
SRO 569(I)/2014 June 26, 2014	Repeal of Federal Excise Duty and Sales Tax on Production Capacity (Aerated Waters) Rules, 2013
SRO 570(I)/2014 June 26, 2014	Consequential to the repeal of Federal Excise Duty and Sales Tax on Production Capacity (Aerated Water) Rules, 2013, SRO 490(I)/2004 dated 12 June 2004 was also amended
SRO 571(I)/2014 June 26, 2014	Rate of sales tax on import of rapeseed, sunflower seed and canola seed by solvent extraction industries has been enhanced from 14% to 16% on value of such imports.

NOTIFICATION/ CIRCULAR/ GENERAL ORDER REFERENCE	ISSUES INVOLVED
SRO 572(I)/2014 June 26, 2014	Rate of sales tax on import or supply of agricultural tractors falling under PCT Heading 8701.9020 reduced to 10% from 16%.
SRO 573(I)/2014 June 26, 2014	<p>Following notifications relating to zero rating and exemptions on certain items were rescinded consequent to the amendments made in the Fifth and Sixth Schedules to the Sales Tax Act, 1990 by Finance Act, 2014 –</p> <ul style="list-style-type: none"> • SRO 549(I)/2008 dated 11 June 2008 • SRO 551(I)/2008 dated 11 June 2008 • SRO 727(I)/2011 dated 1st January 2011 • SRO 501(I)/2013 dated 13 June 2013 • SRO 670(I)/2013 dated 18th July 2013
SRO 575(I)/2014 June 26, 2014	Amendments made in SRO 1125(I)/2011 dated 31 December 2011 with regard to conditions applicable on special rates for certain export oriented sectors (such as textile, leather, sports, etc.)
SRO 576(I)/2014 June 26, 2014	Further amendments made in Sales Tax Special Procedure Rules, 2007 relating to steel melting units, steel re-rolling units, composite units of melting and re-rolling, etc.
SRO 608(I)/2014 July 02, 2014	Amendments made in the Sales Tax Special Procedure Rules, 2007 prescribing new sales tax regime for the retailers

SINDH SALES TAX ON SERVICES ACT, 2011

CIRCULARS/ NOTIFICATION REFERENCE	ISSUES INVOLVED
SRB-3-4/01/2014 February 03, 2014	Exemption from levy of Sindh sales tax on services provided by registered persons to the Karachi Urban Transport Corporation, for exclusive use in the project of "Revival of Karachi Circular Railways as Modern Commuter System" subject to fulfilment of certain conditions
SRB-3-4/2/2014 February 14, 2014	Exemption from whole of the Sindh sales tax on certain services provided by registered persons to the Sindh Culture, Tourism and Antiquities Department for exclusive use in organising and celebrating the Sindh Cultural Festival 2014, subject to fulfilment of certain conditions
SRB-3-4/3/2014 February 25, 2014	Amendments made in the Sindh Sales Tax on Services Rules, 2011 relating to the procedure for levy, collection and payment of sales tax on sponsorship services for LDI telecommunication services
SRB-3-4/4/2014 March 20, 2014	Amendment in Exemption Notification SRB-3-4/2013 dated 18 June 2013 by extending the exemption on services exported out of Pakistan by accountants and auditors with effect from 1 st July 2013
SRB-3-4/5/2014 March 20, 2014	Further amendment made in the Sindh Sales Tax on Services Rules, 2011 relating to the procedure of payment of sales tax by legal practitioners & consultants, accountants & auditors and tax consultants
SRB-3-4/6/2014 April 17, 2014	Incentive package of waiver of 100% penalty and 95% of the default surcharge for persons depositing the arrears of Sindh sales tax by 30 th April 2014.
SRB-3-4/7/2014 April 18, 2014	Incentive Package of waiver of 100% penalty and 95% of the default surcharge for persons providing or rendering certain construction services
SRB-3-4/8/2014 June 04, 2014	Taxpayers' Incentive Package notification granting 100% waiver of penalties and 75% waiver of default surcharge in case of payment of arrears by 25 June 2014
SRB-3-4/9/2014 June 05, 2014	Incentive Package of waiver of 100% penalty and 75% of the default surcharge for persons providing or rendering certain construction services
SRB-3-4/10/2014 July 01, 2014	Amendments made in Notification No.SRB-3-4/8/2013 dated 1 st July 2013 by enhancing the rate of sales tax on legal practitioners, accountants, auditors, tax consultants, etc. from 4% to 5% and prescribing reduced/ special rate of Sindh Sales Tax for certain new categories of taxable services
SRB-3-4/11/2014 July 01, 2014	Further amendments made in Notification No.SRB-3-4/7/2013 dated 18 th June 2013 by extending the scope of exemption to services provided by tour operators in relation to Hajj and Umrah tour package and restricting/ withdrawing exemptions for certain other taxable services
SRB-3-4/12/2014 July 01, 2014	Exemption from levy of Sindh sales tax on certain taxable services provided to Sindh Engro Coal Mining Company (Pvt.) Limited, for the exclusive use in the SECMC project of the development of coal mining at Thar Coal Block – II, during the construction phase of the project
SRB-3-4/13/2014 July 01, 2014	Amendments made in the Sindh Sales Tax on Services Rules, 2011 mainly consequential to the amendments made through the Sindh Finance Act, 2014 in the Sindh Sales Tax on Services Act, 2011
SRB-3-4/14/2014 July 01, 2014	Repeal of existing Sindh Sales Tax Special Procedure (Withholding) Rules, 2011 and notification of new Sindh Sales Tax Special Procedure (Withholding) Rules, 2014

SECP – CORPORATE

CIRCULAR / NOTIFICATION S.R.O. REFERENCE	SUBJECT
S.R.O. 19(I)/2014 Dated: January 10, 2014	Extension in the deadline for seeking Commission's approval for dividends announced upto December 31, 2014 in terms of SRO 83(I)/2012 dated July 05, 2012 for obtaining CNICs of shareholders by listed companies for distribution of dividends, on fulfillment of specified conditions in the notification
S.R.O. 68(I)/2014 Dated: January 30, 2014	Draft rules issued of "Unit Linked Products and Fund Rules, 2014" for public opinion within 30 days of publication in respect of Life Insurance Contracts offering life insurance coverage coupled with saving products through unit linked investment funds
S.R.O. 80(I)/2014 Dated: February 03, 2014	Draft of "Employees Provident Fund (Investment in Listed Securities) Rules, 2014" issued for public opinion within 14 days of publication, specifying revised Limits and Conditions for investment of Employees Provident Funds in Listed securities by repealing earlier issued Employees' Provident Fund (Investment in Listed Securities) Rules, 1996
S.R.O. 116(I)/2014 Dated: February 19, 2014	Securities and Exchange Commission (Micro Finance) Rules, 2014 issued which shall come into force at once
S.R.O 162(I)/2014 Dated: March 12, 2014	Directive issued to all registered life insurers under the Insurance Ordinance, 2000 for Centralized Information Sharing Solution for Life Insurance Industry (CISSII) to be developed and maintained by the Central Depository Company (CDC) in accordance with Memorandum of Understanding signed by CDC and Life Insurance/ Takaful Operators
S.R.O. 482(I)/2014 Dated: June 04, 2014	Draft of "Companies (Proxy E-Voting) Regulations, 2014" issued for public opinion within 30 days of publication in official Gazette
Circular No.1/2014 Dated:: January 07, 2014	It is clarified that Growth Rate Scenarios for life insurance and family Takaful illustrated @ 7%, 9% and 11% for 2013 in Circular No.1/2013 dated 16-01-2013 shall remain for 2014 and onwards
Circular No.2/2014 Dated: January 22, 2014	On the recommendations of NBFIs and Modaraba Association of Pakistan, the Religious Board for Modarabas, in its meeting held on 20-12-2013 has approved the changes in 'Model Financing Agreement of Ijarah' and Short Form Agreement of Ijarah' and accordingly all members are advised to adopt the aforesaid revised Agreements with immediate effect
Circular No.3/2014 Dated: January 31, 2014	Notification of publication of Draft 'Unit Linked Products and Fund Rules, 2014' through S.R.O 68(I)/2014 dated 30-01-2014 for eliciting public opinion by March 01, 2014
Circular No.4/2014 Dated: January 31, 2014	Revision of Enlistment/ Categorization of Auditors on the approved list pursuant to section 48(1) of the Insurance Ordinance, 2000 for qualifying as Statutory Auditors of Insurance/ Reinsurance/ Takaful Entities. Interested Audit Firms advised to file prescribed Application with all documentary evidence
Circular No.5/2014 Dated: February 14, 2014	Announcement of Approved List of Auditors with Category "A" and "B" for conducting statutory audit pursuant to section 48(1) of the Insurance Ordinance, 2000 based on Gross Written Premium and Total Assets of Insurance/ Reinsurance/Takaful Entities for the year ending 30 th June, 2014
Circular No.6/2014 Dated: March 12, 2014	Information of issuance of "Third Party Administrators for Health Insurance Regulations, 2014" through S.R.O 160(I)/2014 dated 10-03-2014
Circular No.7/2014 Dated: March 13, 2014	Background and information on directives on "Centralized Information Sharing Solution for Life Insurance Industry" vide S.R.O 162(I)/ 2014 dated 12-03-2014 for all registered life insurers under the Insurance Ordinance, 2000 for smooth functioning, which directive is effective from May 01, 2014

CIRCULAR / NOTIFICATION S.R.O. REFERENCE	SUBJECT
Circular No.8/2014 Dated: May 16, 2014	Prescribed application and documents specified for authorization as Window Takaful Operator under the Takaful Rules, 2012 besides fulfillment of condition that "every insurer interested to commence Window Takaful Business shall transfer an amount of not less than Rs.50 million to be deposited in a separate bank account for Window Takaful Business duly maintained in a scheduled bank", by superseding all earlier Circulars
Circular No.9/2014 Dated: April 22, 2014	All Insurance Companies and Insurance Brokers directed to observe strict compliance with section 226 of the Companies Ordinance, 1984, and that no deposit shall be received or utilized except in accordance with a contract in writing. However, if any money is received as a result of any contract in writing, then all such deposits shall be kept in a special account with a scheduled bank and no portion thereof should be utilized, except as stated in the underlying contract
Circular No.10/2014 Dated: May 21, 2014	Listed Companies have been allowed to hold Annual General Meetings through video conference facility by following specified requirements and procedures mentioned in the Circular
Circular No.12/2014 Dated: May 29, 2014	Public Sector Companies (Corporate Governance) Rules, 2013 notified via S.R.O 677(I)/2013 dated 24-07-2013 have become effective from 08 th August, 2013 and Public Sector Companies (Corporate Governance Compliance) Guidelines, 2013 have also been issued for compliance. A Statement of compliance required under Rule 24 has been circulated to the stakeholders and also available on the website, which statement is required to be furnished to the SECP and Registrar concerned along with annual audited accounts of the Company for the financial years ending on or after 30 th June, 2014
Circular No.13/2014 Dated: June 04, 2014	Directives to all Non-listed Companies which are required to appoint Quality Control Review (QCR) rated audit firms as their statutory external auditors, to facilitate their statutory external auditors in Quality Control Review of their audit working paper files by authorizing them to make available all the relevant information/ documentation/ records, including audit working paper files to the Quality Assurance Department of the Institute of Chartered Accountants of Pakistan
Circular No.14/2014 Dated: June 05, 2014	Directive to all Asset Management Companies to place approved constitutive documents of all the collective investment schemes under their management on their respective websites, within 03 months of issuance of this directive. In case of any amendment in the constitutive documents through supplemental documents approved by the SECP, then updated and consolidated constitutive documents (with notes referring to the supplemental constitutive document highlighting the changes in the original document/ clauses) along with the original and supplemental/ restated constitutive documents shall clearly specify the last date of updation i.e. "XYZ fund updated upto DD/MM/YY

DIRECT TAX CIRCULARS AND SROs

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
Circular 01/2014 Dated: February 28, 2014	Extension in date of filing of income tax returns under clause (87) and clause (88) of Part IV of the Second Schedule to the Income Tax Ordinance, 2001 ("Ordinance")
Circular No 2 of 2014 Dated: July 17, 2014	Clarification regarding important amendments made in the Ordinance via the Finance Act, 2014
S.R.O. 17(I)/2014 Dated: January 07, 2014	<p>Pursuant to Section 236I of the Ordinance, educational institutions are required to collect advance tax @ 5% on the amount of fee received. Clause (89) has been introduced in Part IV of the Second Schedule to the Ordinance, according to which the provisions of Section 236I of the Ordinance shall not be apply to the following persons:</p> <ul style="list-style-type: none"> • Federal or Provisional government, • Individuals entitled to privileges under the United Nations (Privileges and Immunities) Act, 1948, • Foreign diplomats or a diplomatic mission in Pakistan, • A non-resident person, who provides the following details/ documents: <ul style="list-style-type: none"> (a) Copy of passport as evidence that during previous tax year his stay in Pakistan was less than 183 days; (b) Certificate that he has no Pakistan source of income; and (c) The fee is remitted directly from abroad through normal banking channels to the bank account of the educational institution. <p>Pursuant to Section 236D of the Ordinance, every prescribed person is required to collect advance tax @ 10% on the total amount of bill from a person arranging or holding a function in a marriage hall, marquee, hotel, restaurant, commercial lawn, club, a community place or any other place used for such purpose. Clause (90) has been inserted in Part IV of the Second Schedule, according to which the provisions of Section 236D of the Ordinance shall not apply to the following persons:</p> <ul style="list-style-type: none"> • Federal or Provisional Government, • Individuals entitled to privileges under the United Nations (Privileges and Immunities) Act, 1948, • Foreign diplomats or a diplomatic mission in Pakistan
S.R.O. 115(I)/2014 Dated: February 19, 2014	It would be recalled that the Finance Act, 2013 introduced section 165A in the Ordinance which required Banks to submit certain specified information to the FBR without prejudice to anything contained in the Banking Companies Ordinance 1962, Protection of Economic Reforms Act 1992, Foreign Exchange Regulation Act, 1947 and the regulations made under the State Bank of Pakistan Act, 1956. Through the SRO Chapter VIIIA has been inserted in Part III of the Income Tax Rules, 2002 (the Rules). This chapter contains rules for outlining the reporting requirements for the purpose of section 165A of the Ordinance
S.R.O. 341(I)/2014 Dated: May 02, 2014	Through this S.R.O., Clause (56A) has been inserted in Part IV of the Second Schedule which provides exemption from withholding tax under section 148 of the Ordinance on import of potatoes made between May 05 to July 31, 2014 for an aggregate import of 200,000 metric tons
S.R.O. 351(I)/2014 Dated: May 07, 2014	The FBR has specified jurisdiction, powers and functions under the Ordinance to the Directorate General of (Intelligence and Investigation) for various classes of taxpayers

SYNOPSIS OF IMPORTANT CASE LAWS

SALES TAX, CUSTOMS AND FEDERAL EXCISE

CITATION	SECTION(S)	ISSUES INVOLVED
(2014) 109 TAX 25 (H.C.Lah.)	40 and 40A of the Sales Tax Act, 1990	<p>In this case, the case was remanded to the Hon'ble Lahore High Court by the Hon'ble Supreme Court on the sole ground that in a criminal matter, the viewpoint of the State ought to have been taken into consideration by the Court whilst quashing the FIR alleging violation of various sections of the Sales Tax Act, 1990 by the Petitioner Company.</p> <p>The primary contention of the Petitioner was that the Department had violated the provisions of sections 40 and 40A of the Act by conducting a raid and search without warrant and that the challan was framed after a lapse of seven years which is a sufficient ground for quashing the FIR.</p> <p>On the issue relating to the lack of a search warrant with the authorities before their entry into the premises of the Petitioner and the collection of material/ records therefrom, it was held by the Court that a search by the sales tax authorities involves surprise and certain degree of coercion in the face of some resistance by an assessee by way of concealment or refusal.</p>
(2014) 109 TAX 34 (H.C.Lah.)	2(37), 37A, 37B and 37C of Sales Tax Act, 1990	<p>In this case, the Petitioner was registered for sales tax after receiving a notice for compulsory registration and thereafter, also received a notice for Investigative Audit under section 38 of the Sales Tax Act, 1990.</p> <p>Whilst the record requisitioned through the above notice was provided by the Petitioner, the sales tax authorities, without completing the audit, registered a case/ FIR under sections 37A, 37B and 37C of the Sales Tax Act, 1990 against the Petitioner.</p> <p>The Court accepted the Petitioner's stance and directed the sales tax authorities to complete the investigative audit as initiated under section 38 of the Sales Tax Act, 1990 to adjudge the liability of the Petitioner and only after adjudging the liability of the Petitioner, coercive measures can be adopted against him.</p>
(2014) 109 TAX 47 (H.C.Kar.)	2(33), 2(35), 2(41) & 13 of Sales Tax Act, 1990	<p>The primary question came for consideration before the Hon'ble High Court in this case was as to whether or not the electricity produced by the appellant Company and supplied to the houses of the Company's in-house employees, falls within the ambit of taxable supply. Further, as to whether there was any exemption from payment of sales tax available to such supplies made free of cost to its employees by the applicant.</p> <p>By relying on the definitions of supply, taxable supply and taxable activity given in sections 2(33), 2(41) and 2(35) of the Sales Tax Act, 1990, it was held by the Court that the applicant is engaged in taxable activity and by providing electricity to its employees, it has made taxable supplies which was chargeable to tax particularly when there was no exemption under section 13 of the Sales Tax Act, 1990.</p>
(2014) 109 TAX 65 (H.C.Lah.)	11A and 48(1)(b) of Sales Tax Act, 1990	<p>In this case, the dispute related to the action taken by the sales tax authorities against the Petitioner (which was a supplier of Electricity) under section 11A of the Sales Tax Act, 1990 based on the apparent anomaly between the units of electricity declared in Annex C of the sales tax return and actual units as per respective electricity bills issued to the suppliers.</p> <p>The common grievance of the Petitioners was that the sales tax authorities had initiated action under section 11A which was not applicable and such section cannot be invoked for the purposes of alleged short paid tax by</p>

CITATION	SECTION(S)	ISSUES INVOLVED
		<p>relying on extraneous documents and information. It was contended by the Petitioner that if there is any dispute with regard to the amount of sales tax paid then the proceedings should be initiated under section 11 to pass an assessment order.</p> <p>The Hon'ble Court, however, held that section 11A enables the sales tax authorities to collect short paid amounts without giving any show cause notice and without prejudice to any action under section 48 of the Sales Tax Act, 1990. It was further observed that the purpose of this section is to enable the sales tax authorities to recover the amount of less paid tax as indicated in the sales tax returns without recourse to the person and such tax due has to be determined from the sales tax returns filed by the person and as such, no further information/ document is needed.</p> <p>In the context of this particular case, it was held by the Hon'ble Court that for the purposes of section 11A of the Sales Tax Act, 1990, the electricity bills relied upon forms part of the sales tax returns filed and the action initiated under section 11A was, therefore, based on the information provided in the sales tax returns filed by the Petitioners.</p>
(2014) 109 TAX 75 (H.C.Lah.)	37 of Sales Tax Act, 1990 and Qanoon-e-Shahadat Order, 1984	<p>The Petitioner in this case impugned summons issued to him under section 37 of the Sales Tax Act, 1990 by the Assistant Director/ Investigation Officer, Directorate of Intelligence & Investigation Inland Revenue, Lahore.</p> <p>The issue before the Court was whether the identity of the Client is privileged communication under Article 9 of Qanoon-e-Shahadat Order, 1984. The Hon'ble Court observed that the Petitioner was an Advocate engaged by his Client in a case, and was called upon to disclose the identity of his Client. As such, the information was to be used in furtherance of the investigation carried out by the authorities.</p> <p>It was held by the Court that in such a situation, the identity of the Client becomes privileged communication under Article 9 of the Qanoon-e-Shahadat Order, 1984 and, therefore, the respondents cannot use the machinery available with them for the purposes of investigation to compel an Advocated engaged by his Client to represent in some other matter, to disclose the whereabouts of the Client so that the Client can be interrogated with respect to the alleged tax fraud.</p>
(2014) 109 TAX 111 (H.C.Pesh.)	Sections 2(3), 2(46), 3, 13, 11(2) and 36(1) of the Sales Tax Act, 1990	<p>The Sales Tax Reference application in this case was filed by KPK Text Book Board on the issue as to whether or not it was required to withhold sales tax from payments made to Printers of text books when such books were exempt from sales tax under the relevant Entry of the Sixth Schedule to the Sales Tax Act, 1990.</p> <p>The Hon'ble Court whilst agreed that the supply of books is exempted from the payment of sales tax, however held that printing services by vendors to the Text Book Board were not exempted from sales tax and therefore, the Board was under legal obligation to withhold/ collect sales tax from the Printers.</p>
(2014) 109 TAX 233 (H.C.Lah.)	30, 31 and 47(1) of the Sales Tax Act, 1990	<p>Reference was filed by the Commissioner Inland Revenue alongwith his affidavit that he had relinquished the charge of the post of CIR and assumed charge of the post of Chief Commissioner Inland Revenue. The Officer concerned was, therefore, not the CIR exercising jurisdiction over the appellant's case and not qualified to be the Commissioner for the purposes of section 47.</p>

CITATION	SECTION(S)	ISSUES INVOLVED
		As an effect of the above, it was held that the Reference Application was not maintainable as the same was not instituted by the Authorised Officer. The Reference Application was, therefore, dismissed on technical grounds.
(2014) 109 TAX 229 (H.C.Lah.)	2(22A), 2 (14), 2(20), 7 and 7(1) of the Sales Tax Act, 1990	<p>Section 2(22A) of the Sales Tax Act, 1990 was amended by the Finance Act, 2013 whereby Provincial Sales Tax was defined as sales tax levied by Provinces which is also notified by the Federal Government. In the absence of any such notification, the Federal Board of Revenue was not accepting the adjustment of provincial input tax against federal output tax and, therefore, various Petitions were filed by the taxpayers to challenge such interpretation.</p> <p>The Hon'ble High Court accepted the Petitions by holding that section 2(22A) cannot be interpreted in a manner to disallow/ disentitled the taxpayers from adjustment of provincial input tax. It was, therefore, directed that the sales tax returns of the taxpayers should be accepted manually or electronically by allowing adjustment claimed by the Petitioners of provincial sales tax on services under provincial sales tax laws.</p>
(2014) 109 TAX 313 (Trib.)	11(2) and 36(1) of the Sales Tax Act, 1990	<p>The case related to unlawful adjustment of input tax under section 8(1)(ca) primarily due the reason that the respective suppliers were blacklisted.</p> <p>It was contended by the taxpayer that at the time of the transaction, the suppliers were operative at the FBR record and were filing their sales tax returns. For the mere reason that such suppliers subsequently became blacklisted should not disentitle the taxpayer from its claim for the input tax.</p> <p>The learned Appellate Tribunal decided the issue in taxpayer's favour by placing reliance on the High Court's judgement where the provisions of section 8(1)(ca) were held to be ultra vires.</p>
2014 PTD 498	Sales Tax Act, 1990	In this case, department filed a Reference under the Sales Tax Act, 1990 against the order passed by the learned Customs, Excise & Sales Tax Appellate Tribunal wherein action of imposition of sales tax on taxpayer was maintained, however, the demand of additional tax was remitted. By upholding the decision of the learned Appellate Tribunal, it has been held that the additional tax under section 34 of the Sales Tax Act, 1990 is not mandatory and the authorities have discretion to allow such concession. The Hon'ble Court observed that important issue which needs to be examined was as to whether evasion or non-payment of tax was willful or malafide
2014 PTD 42	Section 179 of the Customs Act, 1969	In this case, Petition was filed by the owner of an Oil Tanker whose tanker was seized by the Police and after seizure and arrest of the Driver and two other persons, the same were handed over to the Directorate of Intelligence & Investigation (DII), Karachi. Subsequently the DII lodged FIR before the Special Judge (Customs & Taxation), Karachi where at the trial, the accused persons pleaded guilty, and were convicted for a period for which they had already undergone after their arrest and with a fine of Rs.100,000/- each. While dealing with the Oil Tanker, the learned Special Judge ordered that the same shall also be confiscated and auctioned in accordance with law and sale proceeds thereof be deposited in the Government treasury. It was contended that the order of confiscation by the learned Special Judge was without any lawful authority and jurisdiction, for the authority of confiscation or otherwise exclusively falls with the domain of Customs authorities under section 179 of the Customs Act, 1969. It was also pleaded that the Order-in-Original was passed and in the order, the Additional Collector (Adjudication) has given an option to

CITATION	SECTION(S)	ISSUES INVOLVED
		<p>the owner of the Oil Tanker under section 181 of the Customs Act, 1969 read with SRO 499(I)/2009 dated 13.6.2009 and FBR's letter dated 26.6.2006 to redeem the same on payment of redemption fine equivalent to the 20% of the value of the vehicle in addition to payment of penalty of Rs.50,000/-. Prayer was made before the Hon'ble High Court that the confiscated vehicle may be allowed to be released after the payment of fine and penalty in accordance with ONO. A contention was raised by the Respondent that since the remedy was available under the Customs Act, 1969 the Petition was not maintainable.</p> <p>It has been held by the Hon'ble High Court that although it is settled law that when alternate remedy is provided under any law, Writ jurisdiction under Article 199 of the Constitution shall be exercised with restraint but such role is not absolute. It was observed by the Hon'ble High Court that if an order is challenged on the ground that same was wholly without jurisdiction or the person who passed such order was not at all competent to do so; the aggrieved person can invoke the Constitutional jurisdiction under Article 199. The Hon'ble High Court referred to the judgment of Hon'ble Supreme Court in this regard. The Hon'ble High Court further examined the import of sections 179 and 181 of the Customs Act, 1969 and ultimately held that the learned Special Judge could only convict and sentence a person and impose fine but had no jurisdiction to confiscate the Oil Tanker</p>
2014 PTD 136	Sections 25A and 25(9) of the Customs Act, 1969	In this case, the Hon'ble High Court has examined the interpretation of section 25-A in respect of Valuation Ruling.
2014 PTD 383	Customs Act, 1969	In this case, Reference filed by the Collector of Customs was barred by time. The Hon'ble Court on the basis of decisions of the Hon'ble Supreme Court of Pakistan held that on the question of limitation, the Government could not be treated differently from ordinary litigant and that each day of limitation must be satisfactory explained
2014 PTD 284	Federal Excise Act, 2005	<p>In this case, Reference was filed under the provisions of the Federal Excise Act, 2005 by a Bank on the chargeability or otherwise of certain transactions namely insurance commission, merchant discount and speedy cash home remittance under the provisions of the Federal Excise Act, 2005. The department had taxed the said transactions by passing order-in-original which was confirmed by the first and second Appellate authorities. It was argued before the Hon'ble High Court that the said transactions do not fall within the ambit of chargeability as contained in the First Schedule. It was argued that the tariff heading 98.13 before its substitution and after substitution did not apply to such transactions. On the other hand, the department contended before the Hon'ble High Court that such transactions were taxable as the same fall under the sub heading of Heading 98.13 i.e. Others. The contention was raised before the Hon'ble High Court by the applicant Bank that 'Others' sub-heading under Tariff Heading 98.13 were in fact sub-ordinate heading, which were linked to various sub-headings and none of which were relevant to their case.</p> <p>The Hon'ble High Court after examining the case at length allowed the Reference in favour of the Bank and against the department. In consequence thereof, the questions raised in respect of levy of additional surcharge and penalty were also declared in favour of the Bank</p>

SYNOPSIS OF IMPORTANT CASE LAWS

DIRECT TAX

2014 PTD 215	Section 62 of the Income Tax Ordinance, 1979	<p>In this case, assessment was framed under section 62 of the Income Tax Ordinance, 1979 (since repealed) wherein the Assessing Officer had rejected the trading accounts and estimated the sales and gross profit. Certain additions were also made out of profit and loss account expenses. The assessee filed first appeal where certain relief was granted by reducing the sale and gross profit. The department as well as the assessee filed second appeal before the learned Appellate Tribunal. The appeal of the department was dismissed whereas appeal of the assessee was accepted to the extent of declared trading results which were directed to be accepted. The department being aggrieved against such order filed reference before the Hon'ble Lahore High Court, which was dismissed and thereafter the department filed Civil Petition for Leave to Appeal. Before the Hon'ble Supreme Court, reference was made to the Auditor's report, which had stated that the statutory auditors have not verified the stock and spares and relied upon the certificate of management and that they have not obtained balance confirmation from the banks in respect of mark-up payable and bills payable, therefore, it was submitted that even on the basis of auditor's report, accounts cannot be relied upon. Therefore, it was contended before the Hon'ble Supreme Court that Assessing Officer was justified in making the additions. The assessee's counsel opposed the above arguments and submitted that the accounts were fully verifiable; same were presented before the assessing authority and the assessment was made without issuing notice under the provisions of section 62 of the repealed Ordinance and without finding defects in the books of accounts. It was submitted that the said procedure was mandatory in nature, which was not followed in later and spirit. It was further argued that question of law referred for the opinion of the Hon'ble High Court did not arise from the order of the Appellate Tribunal as the Appellate Tribunal has given factual finding that no defects were found in the books of account.</p> <p>The Hon'ble Supreme Court observed that the Hon'ble High Court had examined all the aspects of the case including the audited accounts of the Respondent and reached to the correct conclusion. It was also found by the Hon'ble Supreme Court that no notice as specified under the proviso to section 62 of the repealed Ordinance was issued by the Assessing Officer who, without pointing out any defect in the books of accounts rejected the same. It was also observed by the Hon'ble Supreme Court that no discussion has been made by the Assessing Officer under alleged qualification of the auditor's report and on the basis of that disqualification, no addition was made. Consequently, the departmental Civil Petition for Leave to Appeal was dismissed</p>
2014 PTD 320	Section 150 of the Income Tax Ordinance, 2001	<p>In this case, the Hon'ble Lahore High Court examined the issue that whether the taxpayer company paying dividend in specie to its directors is obliged to deduct tax in terms of section 150 and as to whether the benefit of Clause (103B) of Part 1 of the Second Schedule to the Ordinance introduced in the year 2010 has retrospective effect.</p> <p>It has been held by the Hon'ble High Court that in so far as retrospective applicability of Clause (103B) of Part 1 of the Second Schedule is concerned, there was no ambiguity or anomaly existing in the law as it stood prior to the Finance Act, 2010 and that Clause (103B) was neither remedial or curative legislation. In respect of question of deduction of tax</p>

		on dividend in specie, after examining the statute, it was held that deduction of tax was not required under section 150 as deduction of was not practically possible
2014 PTD 339	Section 70 read with Clause (3A), Part IV of the Second Schedule to the Income Tax Ordinance, 2001	<p>In this case, Reference was filed by the taxpayer who filed return for the tax year 2004 and assessment was deemed to have been finalized under section 120 of the Ordinance. Action under section 122(5A) was taken on the premise that the taxpayer has declared income from markup and claimed its exemption under State Bank of Pakistan's Circular No. 29/2002. It was also stated that exemption claimed under the aforesaid Circular is not allowable under the Ordinance which was to be disallowed under section 70. The taxpayer contended before the Assessing authority that the exemption has been claimed under Clause (3A) of Part IV of the Second Schedule to the Ordinance, which specifically provides exemption to such income under section 70 of the Ordinance. The explanation was not accepted and accordingly order under section 122(5A) was passed. The appeal of the taxpayer filed before the learned Appellate Tribunal failed. Before the Hon'ble High Court, it was contended that for the tax year 2004, the applicant could not filed the return of income by the due date i.e. 30.09.2004 for which extension was granted and return was filed on 15.10.2004. It was submitted that since the amendment was introduced by Finance Act, 2004 whereby Clause (3A) of Part IV of the Second Schedule to the Income Tax Ordinance, 2001 was inserted whereby certain benefits and extensions were extended and since the case of the applicant was pending for the tax year 2004 and the amendments were applicable from the tax year 2004 and onwards; it was contended that case of the applicant was not past and closed and the benefit of amendment was available to the applicant. On the contrary, the department contended that the amendment was made and brought in through Finance Act, 2004 which was applicable for the tax year 2005 and onwards and not to the earlier years.</p> <p>The Hon'ble High Court after examining the provisions of section 34 and Clause (3A) of Part IV of the Second Schedule held that the same was remedial and beneficial in nature. It was also held that there is no cavil to the legal proposition that normally amendments introduced in fiscal statutes through Finance Acts apply prospectively, unless some retrospective effect has been given by the legislature. On the other hand, in cases where the amendment introduced is remedial and beneficial in nature, it has to be given retrospective effect and also to apply to all pending cases on the date of amendment/ enactment, unless some prospective effect is given by the legislature or it is made prospective by its implication. It is trite principle of construction of a fiscal statute that any amendment introduced by Finance Act, creating any charge or additional burden upon a taxpayer, is given retrospective effect by express words by the legislature, the same would not be applicable otherwise</p>
2014 PTD (Trib.) 842	Sections 65A, 65B, 70, 72, 18 & 22 and Clause 132, Part I Second Schedule to the Income Tax Ordinance, 2001	<p>The appellant was an Independent Power Producer (IPP) which challenged –</p> <ul style="list-style-type: none"> • Taxation of rental income; • Non-proration of common expenditure to income charged to tax; • Non allowance of tax credit under section 65A and 65B; • Taxation of insurance claim received on account of loss of capacity revenue; • Taxation of gain on sale of fixed assets; • Taxation of scrap sales; and • Levy of minimum tax

		<p><u>Taxation of rental income –</u></p> <p>The appellant recovered from certain employees rental income in respect of accommodation facilities provided to such employees at the plant on which they appellant claimed exemption under clause (132), Part I of the Second Schedule. The tax authorities disallowed the exemption owing to the their opinion that rental income does not constitute profit and gains of the electric power project hence not exempt under the above clause. The Appellate Tribunal applying the rule of ‘substance’ over ‘form’ held that essentially the appellant recouped salary expenditure which was required to be dealt with under the head income from business which is exempt for the appellant.</p> <p><u>Non-proration of common expenditure to income charged to tax -</u></p> <p>The tax authorities levied tax on certain income of the appellant but did not apportion common expenditure as demanded by the appellant in terms of section 67 of the Ordinance read with rule 13 of the Income Tax Rules, 2002. The Appellate Tribunal held that once an income is brought to tax, common expenditure, if any are to be apportioned and allowed under the above referred provisions of law.</p> <p><u>Non allowance of tax credit under section 65A and 65B -</u></p> <p>The appellant claimed tax credit under sections 65A and 65B of the Ordinance and as far as the prerequisites thereof, these were duly met. However, the tax credit were not allowed against income from other sources which was brought to charge of tax by the tax authorities. The Appellate Tribunal relying on a decision of a full bench in 1989 PTD 1185 held that a liability of tax credit is by reference to a taxpayer and not to any particular source of income. Accordingly, the tax authorities were directed to allow the tax credits against income charged to tax.</p> <p><u>Taxation of insurance claim -</u></p> <p>During certain period of time the appellant was not capable of producing electricity for, its plant was hit by floods which made it non-operational. Since during this period the appellant could not maintain the capacity as contemplated in the Power Purchase Agreement signed with the Government of Pakistan. The amount on this account, however, remained recoverable by the appellant from an Insurance Company as it had already insured its loss of profits on account of capacity payments. The impugned amount having been recognized as income in the financial statements on accrual basis, was subjected to tax as income from other sources by the tax authorities. The appellant maintained that the amount represents income from business and relied on 1985 PTD 136 (Bombay High Court), 22 ITR 484 (Supreme Court of India) and 2010 PTD 1809 re: Uch Power Company Limited.</p> <p>The Appellate Tribunal agreeing with the contentions raised by the appellant held as under –</p> <p>“On principle, the nature of the receipt of the amount paid by the insurance company is in no way different or what it would have been if the amount otherwise resulting into insurance claim had been received in the ordinary course of transaction. The compensation on this account would partake of the same nature against which the receipt accrues to a taxpayer. Consequently, for</p>
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all purposes, practical or legal, the insurance claim has to be treated as a component of income from business because capacity payment, otherwise accruing to taxpayers, constitutes business income.

19. That being the case, since business income of the taxpayer admittedly enjoyed exemption under clause (132), therefore, insurance claim accruing to the taxpayer in the fact and circumstances discussed supra, being a component of business income, remained exempt from levy of tax. The findings contained in the impugned order are faulty on another count. At one hand the insurance premium paid by the taxpayer, including on account of insuring loss of capacity revenue, is undisputedly being accepted as a deduction for the purposes of computing income from business while on the other hand amount accruing on account of insurance claim is being divorced from the business. This is a clear case of blowing hot and cold together. Thus the orders of the authorities below are not sustainable. The amount clearly remains connected with the business of the taxpayer and hence constitutes nothing but business income.”

Taxation of gain on sale of fixed assets -

The appellant claimed that gain arising on sale of fixed assets is covered by the exemption provided in Clause (132), Part I of the Second Schedule. The tax authorities did not accept this contention and taxed the gain accordingly. However, the Commissioner (Appeals) disapproved the treatment of the tax authorities and allowed the exemption. On the departmental appeal the Tribunal agreed with the Commissioner (Appeals) and following the reported decision 2010 PTD 1089 held that the gain being income from business is exempt under Clause (132) ibid.

Taxation of scrap sales -

The claim of exemption made by the appellant on sale of scrap was disallowed based on the decision of the Appellate Tribunal 2006 PTD 288. The Commissioner (Appeals), however, following the ratio settled in 2011 PTD 2440 by the Appellate Tribunal exempted the receipts from sale of scrap. The Appellate Tribunal dismissed the departmental appeal and upheld the decision of the Commissioner (Appeals).

Minimum tax liability –

The charge of minimum tax on capacity purchase price, interest of delayed payments by WAPDA and supplemental bonus income by the Additional Commissioner by discarding the claim of exemption from minimum tax under Clause (11A)(v), Part IV of the Second Schedule was challenged by the taxpayer before the Commissioner (Appeals) who allowed the exemption while following the decision of the Appellate Tribunal (1999) 80 TAX 71. In this decision the Appellate Tribunal followed the ratio settled by the Supreme Court of India in 1994 PTD 1171. The department challenged this verdict but the Appellate Tribunal dismissed the departmental appeal and held that the appellant was not liable to minimum tax under section 113 of the Ordinance in respect of the above receipts.