

## **BUDGET PROPOSALS**

### **BY Karachi Tax Bar Association**

#### **Section 152.**

##### **PAYMENTS TO NON RESIDENTS**

Sub-section (5)(a) empowers the Commissioner to pass an order accepting the notice furnished by a person who intends to make payment to a non-resident person without deduction of tax. No timeframe has been provided for passing the order. It is suggested that timeframe be provided.

##### **Proposal**

Therefore, it is proposed that sub-section (5)(a) be amended in the following manner;

“5(a). The Commissioner on receipt of notice shall pass an order within 7 days either accepting the contention or making the order under sub-section (6).

#### **SECTION 159**

##### **EXEMPTION OR LOWER RATE CERTIFICATE**

Section 159 does not provide a time frame within which the Commissioner has to pass an order or respond to a taxpayer's application for an exemption or lower rate certificate. There is no provision for redressal of the grievance, if the application is not accepted by the Commissioner.

A time frame should be prescribed within which the Commissioner has to pass an order or respond to an application under section 159 and the taxpayer should also be provided a right to challenge the order of refusal.

##### **Proposal**

It is therefore, proposed that words “within 7 days “ may be inserted after the words “ the Commissioner shall” in sub Section (1). The right of appeal or Revision be provided to challenge the refusal of application before the Regional Commissioner.

Section 165 – Rule 45.

#### **STATEMENTS**

Under sub-rule (1), it has been provided that an employer shall furnish to the Commissioner within two months after the end of the financial year a copy of each employer's certificate issued for the year.

Under sub-rule (2), it has been provided that the employer in addition to the above compliance of sub-rule (1) that in addition to it furnish quarterly employer's certificate. It is opinion of this bar that such furnishing of certificates at quarterly basis is un-practicable for the employers as in big organizations; it

becomes very difficult to coup with such compliance after the end of every quarter. We have been informed that the Central Board of Revenue was pleased to keep the operation of Rule 45(2) in abeyance vide letter date 9.10.2002.

### **Proposal**

It is, therefore, proposed that the Rule 45 be deleted.

### **NEW PROVISION – BROADENING THE TAX BASE**

#### **STATEMENT REGARDING IMMOVABLE PROPERTIES**

In the Repealed Ordinance, under the provisions of Section 143A every Registering officer, Revenue officer or other officer appointed to register any documents relating to property (other than agricultural land) under the Registration Act, 1908 was required to furnish a statement regarding the properties the value of which was not less than Rs. 50,000/-, registered with him during the preceding financial year in the prescribed form and verifies in the prescribed manner showing, the names and addresses of the buyers and the sellers, the registered value of the property, the address of the property, the date of registration and such other particulars as may be prescribed.

Likewise responsibility was vested on every person responsible for the assessment of Capital Gain tax arising from sale, exchange or transfer of immovable properties situated within the urban areas specified by Government under the West Pakistan Urban Immovable Property Tax Act, 1958.

Under the Income Tax Ordinance, 2001, there is no such requirement.

### **Proposal**

In our opinion, such statement is instrumental for broadening the tax base. It is, therefore, recommended that similar provision be brought in under the Income Tax Ordinance, 2001.

#### **Section 169 sub-section (4)**

#### **TAX COLLECTED OR DEDUCTED AS FINAL TAX.**

Sub-section (4) of section 169 is para-materia to section 80C (5) and 80 CC (4) of the repealed Ordinance. It has been experienced in the past that the provisions of sections of Repealed Ordinance referred supra were misused without any rhyme and reason and it was the judgments of Appellate Tribunal, Hon'ble High Court and Hon'ble Supreme Court which rescued the tax payers from irrational actions. Reference can be made to the Judgment of Prince Glass and judgment of apex Court of this country reported as PLD 1997 SC 582 in the famous case of Ellahi Cotton Mills vs the Federation of Pakistan.

### **Proposal**

There is, therefore, considerable apprehension in the minds of the members of the Bar that the

provisions of sub-section (4) of section 169 may be misused again. It is, therefore, proposed that sub-section (4) of section 169 be amended suitably so that the said provisions are not misused and while amending the said section, dicta of Hon'ble Supreme Court in Ellahi Cotton is kept in mind.

## **Section 170.**

### **REFUNDS**

**(a)** Under Section 170(1) tax payer who has paid tax in excess of the amount which the tax payer is properly chargeable under Ordinance may apply to the Commissioner for a refund of the excess. Sub-Section (2) gives the procedure for filing application of refund. It has to be applied within two years of the later of the date on which the Commissioner has issued assessment order to which the tax was paid. The limitation for filing the application within two years does not have any rational. It has been held by Hon'ble Supreme Court that where some money is received by the Government not lawfully due, the plea of limitation was violative of the principles of morality and justice. (PLD 1998 SC 64).

### **Proposal**

It is, therefore, proposed that following amendment be made.

In clause (b) of sub-section 2 word "and" be deleted and Clause (c) be deleted.

**(b)** Under sub-section 4 it has been provided that the Commissioner shall within 45 days of receipt of a refund application shall order in writing of the decision after providing the tax payer an opportunity of being heard.

Sub-section (5)(a) provides for an appeal against the order passed under sub-section 4 where as under clause (b) of Section 4 appeal has been provided on the event of failure of the commissioner to pass an order under sub-section 4 within time specific in that section.

As held by Hon'ble Supreme Court, what is not legally due must be returned. This section has unnecessarily created difficulties.

### **Proposal**

It is therefore proposed that sub-section (4) and (5) be amended as under:

#### **Sub-section (4)**

Provided that if no order is passed within the time specified in this sub-section the application shall be deemed to have been accepted and all the provision of this Ordinance shall have effect accordingly. Without Prejudice to above.

In the existing sub Section (5) it has been stipulated that a person aggrieved may prefer an appeal under Part III of Chapter X against an order passed under sub-section (4) or on the failure of the Commissioner to pass an order under sub-section (4) within time specified in that sub-section. Now if we examine the Provisions of Section 127 of Part III of Chapter X, it provides an appeal against an order passed by a Commissioner under Section 170. There is no mention of right of appeal on the event of failure of the Commissioner to pass an order. Secondly, it will be noted that under Sub-Section (5) an appeal shall be

preferred to the Commissioner (Appeals) within 30 days of service of notice of demand in the case of an assessment or penalty. In other cases, the date on which the order to be appealed against is served. As such, strictly speaking, the right of appeal given by virtue of Clause (b) of Sub-Section (5) of Section 170 is non existence under the provisions of Section 127.

### **Proposal**

It is therefore, submitted that necessary amendments are necessary to fill up the lacuna.  
Section 175

### **Power to enter & search premises.**

**(a)** The provision envisages search of premises for the enforcement of the provisions of the Ordinance including survey of persons liable to tax. Under clause (e) of sub-section (1), it has been stipulated that the person who performs the act under section 175 may make an entry on any article found in any premises or place to which access is obtained under clause (a). There is likelihood that because of the usage of word “may” in sub-clause (e), the inventory of the articles may not be made.

### **Proposal**

Therefore, it is proposed that work “may” be substituted with the word “shall”.

**(b)** Clause (a) empower the Commissioner or any officer authorized in writing by him for the purpose of the Ordinance to enter and search any premises. Sub-clause (a) permits free access to “any premises” which expression in our opinion is too wide and can be used irrationally. It is, therefore, proposed that clause (a) of sub-section (1) of Section 175 be suitably amended. The aspect of cultural values, privacy and the dignity of man should be kept in mind while amending the law. Such an amendment is necessary despite the assurance given by the top hierarchy of the Central Board of Revenue that the provisions of this section will not be practically implemented.

### **Proposal**

Therefore, it is recommended that appropriate recommendation be framed accordingly.