



News & Views

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

Executive Committee

Contents

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From the Desk of the President 1

Vice President
Naeem Akhter

From the Desk of the Convener 1

General Secretary
Muhammad Zubair

Important Circulars and Notifications

• Direct Tax 2

• Corporate 4

Joint Secretary
Muhammad Zeeshan Merchant

Synopsis of Important Case Laws

• Direct Tax 6

• Indirect Tax 18

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FROM THE DESK OF PRESIDENT

The Economy of Pakistan has now entering in the phrase of recovery, as different economic indicators are showing the sigh of betterment. You will definitely be pleased to hear that the Federal Board of Revenue (FBR) has achieved the revenue collection target for the fiscal year 2009 and now leaping towards the achievement for the year 2010 as well. Likewise the other institutions, the Income Tax Bar Association has done its duty in providing assistance to the FBR, whenever it was required by them.

We all are well cognizant with the fact that the Income Tax Bar Association Karachi is the largest tax bar in the country. The foremost function of the bar is to equip the bar members as well as the readers with updated income tax knowledge, which ultimately enhance the quality of the bar members. The Income tax bar arranges seminars frequently to give knowledge either to the bar members and readers.

It is the bar tradition to keep updated their members by equipping them with the latest knowledge regarding the profession. We had envisaged a lot of changes in the profession, which is consistently emanating, but it is the prior duty of the bar to condense the threats accordingly.

To achieve the above objective, it is the Bar's tradition to place before their members, news and views which contains the information about Circulars, SRO's/Notifications and the important amendments and decisions of Learned Income Tax Appellate Tribunal, Honorable High Courts and Supreme Court. Now, the issue for the year 2009 is in your hands. We are quite optimistic that this issue will broaden the reader's understanding about current pronouncements and would also prove to be helpful in handling the legal issues, which leaves a positive impact on the consequences.

We are quite optimistic that the current publication will certainly content the knowledge appetite of the readers pertinently. Since, I am relinquishing charge as President of our Bar, I thank all our members for the support they have extended to me. I am specially grateful to my full committee who were there whenever I so required. Taking this opportunity I would like to also please on record the guidance I received from my seniors and would specially like to mention my mentor Mr. Rehan Hasan Naqvi, who whole heartedly not only supported me but went out of his way for me. Since Rehan Sahab is unwell, I request all of you to please pray for his health.

Regards

Najam Irshad Khan

FROM THE DESK OF CONVENER

To be a key member of an entity, which has a remarkable goodwill in the market, is an optimum dream of every one and it is an honor for me to be a key member of the bar and it's my privilege to engage in the activity of serving the bar and its members. I have observed that the News & Views publications is the best tool to abate the imbroglios, regarding the profession of income tax among the bar members and among the readers as well.

Keeping the same tranquility of the readers in mind, we are again able to publish yet another issue of News & Views which covers the period from January 2008 to December 2008, wherein we clearly elaborated the dilemma we faced during the year 2008.

We have an important announcement for you people that this is the last version of News and Views for the year 2009. We are pleased, because we have received very positive feedbacks on our previous News & Views releases which, induced us to publish yet another issue for the guidance of the bar members and end users as well.

I am confident, that the current release will broaden the understanding of the reader and definitely will help to give remedy for all the ambiguities, they might have encountered before. The Committee continuously is trying to build such transparent system from which the issues, which we faced before will completely eliminate, and I am sure that gradually we will overwhelmed different scarcities and will solicit certain counter strategies which will eradicate all the threats. We assure you that, by the grace of ALLAH, we will achieve our optimal desires and fulfill over commitments soon INSHALLAH.

Here, I would like to also compliment my office staff especially Mohammad Rashid, Mr. Muhammad Omar Shahid, Mr. Muhammad Umair Anwar & Mr. Naveed Idris Khan, who helped me a lot while making these publications. Before I end I would also like to thank my committee members, Miss. Rubina Rizvi, Miss. Yasmeen Ajani, Mr. Zafar Ahmed and Mr. Hassan Naeem, who also provided me all the relevant information. I am also grateful to my President Mr. Najam Irshad Khan who provided me the opportunity of being the convener of "News & Views".

Regards

MOHAMMAD REHAN SIDDIQUI

IMPORTANT CIRCULARS & NOTIFICATION/SROs

DIRECT TAX

CIRCULAR/SRO's/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
C. No. 4(36)ITP/2002 Dated: October 05, 2009	<p>Vide this circular the Federal Board of Revenue has decided that cases of the taxpayers shall not be selected for audit where:</p> <ul style="list-style-type: none"> - The individual falling under Final Tax Regime, has accurately and properly reconciled the wealth through wealth statement and wealth reconciliation statement. - Taxpayer other than individual falling under the ambit of Final Tax Regime and discrepancies, if any, shall be addressed through amendment of assessment. <p>Further decided that a case shall be selected for audit for the current tax year only and discrepancies of previous year's declarations shall be addressed by amendment of the relevant assessment.</p>	664
C. No. 4(54)ITP/2009 Dated: October 08, 2009	Vide this circular, Federal Board of Revenue has clarified that the new section 236A of the Income Ordinance, 2001 as per advance tax @ 5% is applicable on gross sale price of any confiscated property or goods sale in public auction and also applicable on transactions involving awarding of lease, lease of right to collect, fees or other levies.	665
SRO 878(I)/2009 Date: October 08, 2009	Vide this notification the Federal Board of Revenue has published the draft Income Tax Return Forms (For Companies) with few amendments.	666
SRO 940(I)/2009 Date: October 28, 2009	Double Tax Treaty entered between the Governments of the Islamic Republic of Pakistan and the Kingdom of Morocco.	667

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
SRO 986(I)/2009 Date: November 17, 2009	IN INCOME TAX RULES, 2002 AFTER SUB- RULE 2D IN RULE 73, NEW SUB-RULE (2E) ADDED AS UNDER: "From Tax Year 2009 onwards, wherever refund of tax is claimed in a non-company case, income tax return shall be filed electronically, and in all cases, whether relating to a company or a non-company, electronically filing of refund application as prescribed in Part-VI of the First Schedule shall be mandatory."	668
C. No. 1(6)IR-Jud/2009(A) Date: December 24, 2009	Vide this notification; the Federal Board of Revenue has transferred prescribed the jurisdiction of "manufacture/dealer/exporter and traders of garments, textile and fabric made-up" from the Commissioner of Inland Revenue, Audit-V, Regional Tax Office, Karachi to the Commissioner of Inland Revenue, Audit-I, Regional Tax Office, Karachi.	669

CORPORATE

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
Circular No. 37 of 2009 Date: January 12, 2009	All insurance/takaful companies reminded to deposit annual supervision fee for year 2010 by January 15, 2010 as per SRO 1123(I)/2009 dated February 18, 2009 and Insurance Division Circular No. 37 of 2009 dated December 21, 2009	670
Circular No. 38 of 2009 Date: December 22, 2009	Freezing of funds and other resources of individuals and entities included in the consolidated list being maintained by the UN 1267 Resolution of the United Nations Security Council as per Ministry of Foreign Affairs Gazette Notification SRO 1017(I)/2009 dated December 04, 2009.	671
Circular No. 39 of 2009 Date: December 24, 2009	Guidelines for Life Insurance and Family Takaful Illustrations 2009 effective from January 01, 2010. All new products launched by Life Insurers and Family Takaful operators shall follow these guidelines from this date.	672
Circular No. 01 of 2010 Date: January 15, 2010	All NBFCs are now required to submit their monthly returns through the Specialized Companies Return System by the 10 of every month. However, to facilitate the industry, all NBFCs will be allowed to submit their online returns by 15 of every month for the first quarter of 2010 only.	673
Circular No. 02 of 2010 Date: January 15, 2010	All the modarabas are required to submit their monthly statements through the Specialized Companies Return System by the 10 of every month. However, to facilitate the sector, all modarabas will be allowed to submit their online returns by 15 of every month for the first quarter of 2010 only.	674
Circular No. 21 of 2008 Date: January 18, 2010	Explanation for re-enacted Anti-Money Laundering Ordinance, 2009 on November 26, 2009.	675
Circular No. 03 of 2010 Date: January 20, 2010	Clarifications issued regarding Circular No. 1 of 2009 in respect of minimum provisioning against non-performing debt securities, in case of Asset Management Companies and Mutual Funds Association of Pakistan.	676

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
Circular No. 04 of 2010 Date: January 23, 2010	Directives for Implementation of IFRS-4 on the Annual Financial Statements for the year ending December 31, 2009 for which comprehensive separate guidelines for Life and Non-Life Insurance Companies issued.	677
SRO 944(I)/2009 Date: October 29, 2009	Security & Exchange Commission of Pakistan directed all asset management companies to report compliance upto June 30, 2010 of the provisions of Regulations 37(7)(k) and Regulations 58(1)(p) Explanation of Non-Banking Finance Companies and Notified Entities Regulations, 2008.	678
SRO 975(I)/2009 Date: November 11, 2009	Direction to all listed companies that right issue once announced by their board of directors shall not be varied, postponed, withdrawn or cancelled.	679
SRO 991(I)/2009 Date: November 20, 2009	Draft amendments proposed in several Rules of the Companies (General Provisions and Forms) Rules, 1985.	680
SRO 1024(I)/2009 Date: December 08, 2009	Draft of new Rule, 7A proposed in the Securities and Exchange Commission (Insurance) Rules, 2008 in regard to Annual Supervision Fee to be paid by an insurer in terms of S. 11(3)(c) of the Insurance Ordinance, 2000.	681
SRO 1024(I)/2009 Date: December 08, 2009	Draft of "Companies (Investment in Associated Companies and Associated Undertakings) Regulations, 2010 issued for objections, suggestions, if any.	682

SYNOPSIS OF IMPORTANT CASE LAW

DIRECT TAX

- Note: 1). Members are advised to read the complete judgment for better understanding of the respective issues.
- 2). Income Tax Ordinance, 1979 is referred as "repealed ordinance" and Income Tax Ordinance, 2001 is referred as "new ordinance" or simply "the ordinance."

CITATION	ISSUES INVOLVED
(2009) 100 Tax 282 High Court Karachi	<p data-bbox="763 672 1572 728">COMMISSIONER OF INCOME TAX V/S. SANA-ULLAH WOOLEN MILLS LIMITED</p> <p data-bbox="763 728 1572 795">SECTION 62 & THIRD SCHEDULE OF THE INCOME TAX ORDINANCE, 1979</p> <p data-bbox="763 795 1572 828">FACTS OF THE CASE</p> <p data-bbox="763 828 1572 1612">In this case, the assessee is a private Company and engaged in the processing of manufacturing and selling of knitting cotton yarn and trading of machinery. During the year under consideration, the assessee has claimed a Triple Shift allowance on Looms, Hydro-Extractor and other machinery under Rule 3 of Third Schedule of the repealed Ordinance. The Assessing officer had observed that the Looms and hydro-Extractors are used for half year and other machinery was used for only 90 days and accordingly the Assessing Officer had restricted the allowance of depreciation and add back the remaining amount to income. In doing the above addition the Assessing Officer has also made reliance on Circular No. 14/1979 issued by the Central Board of Revenue. Being dissatisfied the assessee filed appeal before the Commissioner of Income Tax, Appeals. The Commissioner of Income Tax, (Appeals) after reviewing the arguments advanced by the assessee and earlier decision of Income Tax Appellate Tribunal, had deleted the said addition in income. Tax Department filed an appeal before the Income Tax Appellate Tribunal against the order of the Commissioner of Income Tax, (Appeals). The Income Tax Appellate Tribunal had upheld the order of the Commissioner of Income Tax, Appeals. The Assessee found that the order of the Income Tax Appellate Tribunal is not in consonance of Rule 3 of Third Schedule of the Repealed Ordinance. Being aggrieved the Tax department filed an appeal before the Honorable High Court.</p> <p data-bbox="763 1635 1572 1668">DECISION</p> <p data-bbox="763 1668 1572 2027">The Honorable High Court after hearing the argument of both parties, had confirmed the action of assessing officer for disallowing the full depreciation allowance in the light of sub-rule 2 & 3 of rule 3 of third schedule of the repealed ordinance. As the sub-rule (2) of rule 3 stipulates that extra depreciation allowance shall be proportionate to number of days during which double or triple shift worked. The Honorable High Court has further held that the Commissioner of Income Tax, (Appeals) and the Income Tax Appellate Tribunal decided the case altogether differently and sub-rule 2 & 3 of rule 3 of third schedule of the repealed ordinance had escaped from the attention of both authorities while adjudication of case.</p>

CITATION

(2009) 100 Tax 301
Sindh High Court

ISSUES INVOLVED

COMMISSIONER OF INCOME TAX V/S. NIT LIMITED
SECTION 66-A & 80-D OF INCOME TAX ORDINANCE, 1979

FACTS OF THE CASE

In this case, the assessee is a mutual fund which is managed by NIT limited. During the year under consideration the assessee has claimed exemption under clause 104 of part-I of second schedule of the repealed ordinance. The assessing officer finalized the assessment under section 62 of the repealed ordinance and allowed the exemption. The Inspector Additional Commissioner using the power under section 66-A of the repealed ordinance and gained support from the circular No. 10 of 1991, issued a show cause notice to the assessee whereby the assessee is liable to tax under section 80-D of the repealed ordinance notwithstanding the exemption of its income from normal tax. The assessee replied that the section 80-D is leviable only on turnover/receipts assessable as business income and not on other receipts. The assessee also contended that our receipts did not fall under the ambit of "turnover" mentioned in section 80-D (2) of the repealed ordinance. The IAC did not accept the assessee's arguments and issued order under section 66-A, and charged tax under section 80-D. The Assessee filed appeal before the Income Tax Appellate Tribunal against the order. The Income Tax Appellate Tribunal has decided that the receipts from the sale of shares does not fall under the category of turnover chargeable to tax under section 80-D. The department filed an application before Honorable High Court and contended that the Income Tax Appellate Tribunal while deciding the case has not controvert the legal position of section 2(12) of repealed ordinance which deals with capital assets. the assessee taken the same plea before High Court and further stated that the Central Board of Revenue circular dated July 01, 1974 read with the definition of turnover as per section 80-D leaves no room for any doubt that the receipts from the sale of shares cannot be included in turnover for the purpose of 80-D derived from the sale of goods.

DECISION

The Honorable High Court, after hearing the argument advanced by the both parties, has upheld the order of Income Tax Appellate Tribunal and stated that the applicant was not able to controvert the legal position of the points raised by him in the appeal. Honorable High Court also clarified that the exemption granted on gain of sale of shares, is beneficial and retrospective in nature.

CITATION

(2009) 100 Tax 200 (Trib.)
Income Tax Appellate
Tribunal

ISSUES INVOLVED**SECTION 83(4) & 156 OF THE INCOME TAX ORDINANCE, 1979**

In this case, the assessee is deriving income from registered firm as well as property income but for the tax year under consideration the assessee had not show any property income on plea that he had gifted the concerned property to his son. The assessing officer while finalizing the assessment proceedings charged tax on the property income on the basis that the assessee had not shown any documentary evidence in support of his arguments. Feeling aggrieved, the assessee had filed an appeal before the Commissioner of Income Tax, (Appeals) [CIT(A)] and pleaded the above facts before the CIT(A). The CIT(A) had dismissed the appeal because of non-availability of documentary evidence. Then assessee then filed an appeal before the Income Tax Appellate Tribunal. Income Tax Appellate Tribunal rejected the appeal of the assessee by upholding the findings of the CIT(A). Assessee then, filed a miscellaneous application before Income Tax Appellate Tribunal. Assessee had contended that his son is declaring the property income in his return of income which could be equated to possession of immovable property by his son. The Assessee also confronted the reasons for rejections of appeal vide miscellaneous application.

DECISION

The Income Tax Appellate Tribunal rejected the petition and held that section 83(4) of the repealed ordinance stipulates that in case of gift of immovable property, it must be registered. So the claim of gift of immovable property without registration of the property with the revenue authority is unfounded, therefore, upheld the order of the Income Tax Appellate Tribunal.

CITATION	ISSUES INVOLVED
2009 PTD (Trib.) 2154 Income Tax Appellate Tribunal	<p data-bbox="651 241 1419 304">SECTION 153(1)(C), 153(6A) & 170 OF INCOME TAX ORDINANCE, 2001</p> <p data-bbox="651 304 894 333">FACTS OF THE CASE</p> <p data-bbox="651 333 1419 1077">In this case, the assessee is an individual and providing breakfast, lunch and dinner to the employees of a private company under a contract as canteen contractor. The assessee was also engaged in manufacturing the above food items. At the end of the tax year under consideration, the assessee had filed the statement under section 115(4) of the Ordinance being contractor. Later on, the assessee had filed the revised return under normal law being a manufacturer and claimed a refund of Rs. 796,839/-. The Taxation Officer did not accept the assessee as manufacturer. The TO had treated the revised return as "invalid return" on the basis of the judgment from the Indian jurisdiction and also refused the claim of refund. The assessee filed the appeal before the Commissioner of Income Tax, Appeals. The Commissioner of Income Tax, Appeals had dismissed the appeal and upheld the order of the Taxation Officer. Being aggrieved the assessee filed the appeal before Income Tax Appellate Tribunal and gave explanation of the definition of "manufacturer" which is introduced vide Finance Act, 2008 in the Ordinance. In favour of his arguments, the assessee also quoted a judgment of Honorable High Court of local jurisdiction, wherein the court relied upon the definition of "manufacturer" given in the Black's Law Dictionary. The assessee also contended that in the presence of local reported case, which is more relevant in respect of our case, we do not need to rely on the international judgment. .</p> <p data-bbox="651 1111 764 1140">DECISION</p> <p data-bbox="651 1140 1419 1301">The Income Tax Appellate Tribunal, after considering the arguments of both parties, showed full agreement with the assessee's assertions and has decided to vacate the impugned order passed by the Commissioner of Income Tax, Appeals and annulled the assessment order passed by the Taxation officer.</p>

CITATION

2009 PTD (Trib) 2182
Income Tax Appellate
Tribunal

ISSUES INVOLVED

SECTION 65, 68, 111(3), 113, 120(1) (B), 122(5-A), 131 & 176 OF THE INCOME TAX ORDINANCE, 2001

FACTS OF THE CASE

In this case, the taxpayer (respondent) is a private limited company and engaged in running a hospital, filed a return for the tax year 2004 by declaring loss and paid minimum tax under section 113 of the Ordinance. The taxpayer was involved in construction of Hospital for a couple of years and declared Rs. 573/- Sq. Ft. as cost of construction. The Additional Commissioner of Income Tax did not satisfy with the declared cost of construction of hospital which is comparatively lower than the collector's valuation table for 2002 and according to the collector's valuation table; it should be Rs. 9,720/- Sq. Ft. Accordingly the Additional Commissioner of Income Tax has issued a show cause notice under section 122(5A) of the Ordinance through TCS Courier services by stating that the deemed assessment finalized under section 120(1)(b) was erroneous and prejudicial to the interest of revenue and required to explain the aforesaid difference. On the date of hearing, nobody came to represent the taxpayer before the Additional Commissioner of Income Tax. Consequently, the Additional Commissioner of Income Tax has determined the difference between the declared cost of construction and cost of collector's valuation and added this difference amount in the taxpayer's taxable income under section 111 of the Ordinance. Accordingly, the Additional Commissioner of Income Tax has served the order upon taxpayer. Aggrieved by order taxpayer filed an appeal before the Commissioner of Income Tax, Appeals. The taxpayer contended that they did not receive any show cause notice via TCS Courier Services from the Additional Commissioner of Income Tax and upon enquiry from courier service; it is proved that no notice was sent to taxpayer from the Additional Commissioner of Income Tax. The Commissioner of Income Tax, Appeals deleted the addition in taxable income and annulled the order of the Additional Commissioner of Income Tax due to the non or invalid serving of show cause notice and not providing the taxpayer an opportunity of being heard but order of the Commissioner of Income Tax, Appeals was remained silent on the disputing issue of difference of cost of construction. Feeling aggrieved, the department filed appeal before the Income Tax Appellate Tribunal against the order of the Commissioner of Income Tax, Appeals.

DECISION

The Income Tax Appellate Tribunal, after hearing the arguments of both parties and following the judgment of Lahore High Court cited as (2007) 95 Tax 236, has decided that without proper service of show-cause notice and confrontation to the appellant, action taken by the ACIT under section 122(5A) of the Ordinance is not sustainable in the eye of law. Therefore, the appeal filed by the department was dismissed and order of the Commissioner of Income Tax, Appeals was upheld.

CITATION

2009 PTD (Trib.) 1887
Income Tax Appellate
Tribunal

ISSUES INVOLVED

SECTION 122(5A), 122(9) & 115 (4) & PART IV OF SECOND SCHEDULE OF INCOME TAX ORDINANCE, 2001

FACTS OF THE CASE

In this case, the taxpayer was a manufacturer and an exporter. He has an option under clause 40 & 41-A of the part-IV of Second Schedule of the Ordinance to either file return of total income under section 114 i.e. under normal law or file statement under section 115(4) i.e. opting Final Tax Regime. The taxpayer has filed the statement under section 115(4) of the Ordinance for tax years 2003 and 2004 but for tax year 2005 the he filed the return of total income under section 114 of the Ordinance. Subsequently, the taxation officer has observed that the taxpayer is required by law to file the statement under section 115(4) of the Ordinance instead of return under normal law. The taxation officer has treated the return of the taxpayer as "invalid return" and accordingly amended the assessment order under section 122(5A). The taxpayer being aggrieved filed an appeal before the Commissioner Income Tax, Appeals and contended that he has rightly filed the return under normal law as he has not availed the option of declaring income under Final Tax Regime. The Commissioner of Income Tax, Appeals upheld the order of the taxation officer. Being dissatisfied by the order of the Commissioner of Income Tax, Appeals taxpayer has taken the same plea before Income Tax Appellate Tribunal.

DECISION

The Income Tax Appellate Tribunal after considering the arguments of both parties, has decided to vacate the impugned order passed by the Commissioner of Income Tax, Appeals and annulled the assessment made under section 122(1) by the Taxation officer for the tax year 2005. Further held that the assessee has not furnished any declaration for the presumptive tax regime, therefore, the taxation officer has no justification for amending the assessment.

CITATION

2009 PTD (Trib.) 2163
Income Tax Appellate
Tribunal

ISSUES INVOLVED**SECTION 221 & PART-II OF SECOND SCHEDULE OF INCOME TAX ORDINANCE, 2001****FACTS OF THE CASE**

In this case, the appellant is a private company deriving income from export of cotton fabrics. For the assessment/tax year 2001-2002, 2002-2003, 2003 & 2004 the appellant had filed statement under section 143-B/115(4) of the repealed and new Ordinance wherein the taxpayer had declared export proceeds at the rate of 1%. Later on, the taxpayer had discovered that the cotton fabrics fall within the ambit of textile made-ups and rate of tax applicable on these products is 0.75%. The Appellant had filed the rectification application under section 221 of the Ordinance for the aforesaid assessment and tax years. The taxation officer had rejected the rectification application because he observed that cotton fabrics did not fall under the ambit of textile made-ups. The rectification of assessment years 2001-2002 & 2002-2003 was rejected on the basis of time limitation and rectification of tax years 2003 & 2004 were rejected on the plea that no mistake was apparent from record. The appellant filed appeal before the Commissioner of Income Tax, Appeals and contended that the rectification application was submitted for the excess levy of tax which is refundable to the assessee and appellant also quoted the judgment of the Honorable Supreme Court (PLD 1998 SC 64) in support of his arguments which said that "excess levy of state duties over the actual levy was refundable irrespective of the time limitation". The assessee also quoted various judgments of the higher legal authorities as well as Tribunal for defining the word "Textile made-ups". The Commissioner of Income Tax, Appeals rejected the appeals of the appellant. Feeling aggrieved the appellant filed appeal before the Income Tax Appellate Tribunal.

DECISION

The Income Tax Appellate Tribunal, after considering the arguments of both parties, showed full agreement with the arguments advanced by the appellant, reported judgments of the High Court and Supreme Court. The Income Tax Appellate Tribunal, thereon, vacated the order of the Commissioner of Income Tax, Appeals and directed taxation Officer to allow the rectification as claimed by the assessee.

CITATION

2009 PTD (Trib.) 2209
Income Tax Appellate
Tribunal

ISSUES INVOLVED**SECTIONS 131, 154 & 162 OF THE INCOME TAX ORDINANCE, 2001
FACTS OF THE CASE**

In this case, the taxpayer is an exporter of dry dates and rate of tax on export is levied at 0.75%. According to the Taxation Officer the rate applicable on export is 1.25% which is defined in Seventh Schedule of the Ordinance. Accordingly, the taxpayer was served an order under section 162 of the Ordinance by the Taxation Officer for the recovery of short deduction of taxes without proper serving of show-cause notice. Feeling aggrieved, the taxpayer filed an appeal before the Commissioner of Income Tax, Appeals against the Taxation Officer's order. The Commissioner of Income Tax, Appeals cancelled the order of the Taxation Officer on grounds of improper serving of show-cause notice by the Taxation Officer. The Commissioner of Income Tax, Appeals did not elaborated the facts how he came to the conclusion of the above decision. Both parties were dissatisfied by the decision of the Commissioner of Income Tax, Appeals and went in appeal before the Income Tax Appellate Tribunal against the Commissioner of Income Tax, Appeal's order. Below are the major taxpayer's contentions:

- As the show-cause notice was not properly served by the Taxation Officer then the order of the Taxation Officer should be annulled instead of cancellation by the Commissioner of Income Tax, Appeals.
- That the Taxation Officer has failed to accept the plea that the deemed assessment stands finalized and he was not empowered to invoke the section 162 of the Ordinance after the completion of the assessment.
- That the Commissioner of Income Tax, Appeals has not passed a speaking order and that the order is issued without proper and conscious application of mind.

Below are the Department's contentions:

- That the Commissioner of Income Tax, Appeals was not justified to cancel the order whereas the show-cause notice was served on the person who had been receiving almost all other correspondence made by the Taxation Officer.

DECISION

The Income Tax Appellate Tribunal, after hearing both parties, vacated the order of the Commissioner of Income Tax, Appeals and remanded back the case to concerned Taxation Officer for de novo proceedings.

CITATION

(2009) 100 TAX 324 (Trib.)
Income Tax Appellate
Tribunal

ISSUES INVOLVED

SECTIONS 2, 5, 150, 161, 161(1), 161(1B) & 205(3) OF THE INCOME TAX ORDINANCE, 2001

FACTS OF THE CASE

In this case, the assessee was a public company deriving income from the manufacturing of fertilizer and sales thereof. The assessee has filed the return under normal law. Later on, the taxation officer while examining audited accounts of the assessee found that the taxpayer company has distributed dividend in specie "dividend" to its shareholders through issuance of equity shares held by the taxpayer company in the an other company where no tax was deducted by the assessee company. The taxation officer charged 10% tax being obligatory on the gross amount of dividend and also charged additional tax as per law and issued an order under section 161 of the Ordinance. The assessee filed appeal before the Commissioner of Income Tax, (Appeals). The Commissioner of Income Tax, (Appeals) has dismissed the appeal of the assessee. The Assessee being dissatisfied filed an appeal before the Income Tax Appellate Tribunal. The Assessee contended that the law only prescribed tax rates applicable on dividend, in case of dividend distributed in cash but law does not prescribed any tax rate for dividend distributed in kind. The assessee also quoted various sections of the Ordinance wherein the law specifically talks about tax rate applicable on transaction of cash and of in kind. The assessee further supported his arguments by a reported judgment of Tribunal cited as 199 PTD (Trib.) 2152 wherein similar situation was decided whereby tribunal decided that "where a transaction i.e. basically monetary in nature is settled in kind, withholding provisions cannot be said to have become inapplicable merely on the basis that the eventual settlement thereof was effect in kind." The assessee also contended that as law provides various mode of distribution of dividend, so provision relating to withholding taxes regarding the distribution of dividend other than cash mode should be incorporated. The assessee while framing his arguments also contended that the legislature very precisely excluded the bonus share from the ambit of taxation by the appropriate amendment in law. The Departmental Representative on the other hand contended that when the payment of dividend come into existence the section 150 also becomes operative. The Departmental Representative further contended that the taxpayer has applied its accumulated profit for buying the shares of the another companies and distribution the shares among its own shareholders as "specie dividend" was under legal obligation to collect withholding tax under section 150.

DECISION

The Income Tax Appellate Tribunal, after hearing both parties, vacated the impugned order of the Commissioner of Income Tax, (Appeals). The Income Tax Appellate Tribunal while framing his verdict, has stated that as regards the transaction which have their origin in kind, it cannot be said that these stand covered when expression "paid" is used and in our view, word payment has been interpreted to include settlement in kind only to hold that withholding provisions are not played around with by arguing that eventual settlement did not entail any monetary outflow.

CITATION	ISSUES INVOLVED
(2009) 100 TAX 374 (Trib.) Income Tax Appellate Tribunal	<p data-bbox="638 387 1419 448">SECTIONS 177, 120(1) & 121 OF THE INCOME TAX ORDINANCE, 2001</p> <p data-bbox="638 448 881 481">FACTS OF THE CASE</p> <p data-bbox="638 481 1419 1025">In this case, the assessee was running a business of manufacturing of furniture. Return was filed declaring net income at Rs. 142,654/- which was treated as an assessment order in terms of section 120(1) of the Ordinance. Subsequently, the case was selected for audit under section 177 of the Ordinance. The assessee has not made any compliance against the aforesaid order and taxation officer accordingly issued ex-parte order under section 121 of the Ordinance and assessed the income of the assessee. The assessee filed appeal before CIT(A) who has cancelled the order passed by the Taxation Officer and placed reliance on the decisions of Lahore & Karachi High Courts. CIT(A) also held that "in case of failure of a person to furnish return of income after being required by a notice under section 114, the Commissioner may make the best judgment assessment under section 121 and after doing so shall issue the assessment order to the taxpayer. However, if no return has been filed under section 114 and no notice under section 114 has been issued, no assessment order shall be made or issued or taken to have been issued".</p> <p data-bbox="638 1059 1419 1377">The department being aggrieved filed appeal before the Income Tax Appellate Tribunal against the impugned order of the Commissioner of Income Tax, Appeals. Department contended that there was no justification for canceling the assessment order as the assessee failed to appear before the taxation officer despite the notice and therefore the Taxation Officer has no option except to invoke section 121. On the other hand, the assessee contended that there cannot be double assessment in any case and the Taxation Officer cannot make an assessment when there is already an assessment order in the field in the shape of deemed assessment order.</p> <p data-bbox="638 1411 753 1444">DECISION</p> <p data-bbox="638 1444 1419 1792">The Income Tax Appellate Tribunal, after hearing both parties, upheld the order of the Commissioner of Income Tax, Appeals. The Income Tax Appellate Tribunal held that we do not find force in the contention made by the DR that once the matter is selected for total audit and the case of the taxpayer was not in accordance with the criteria selected for the acceptance of the return, the Taxation Officer is fully authorized to pass the new order and until and unless the order in the field is not cancelled in accordance with law that will not become invalid. However the assessment already passed that may be deemed or other-wise may be amended or rectified under the provision of law.</p>

CITATION	ISSUES INVOLVED
(2009) 100 TAX 173 (Trib.) Income Tax Appellate Tribunal	<p data-bbox="722 353 1502 385">SECTIONS 13(1)(AA) OF THE INCOME TAX ORDINANCE, 1979</p> <p data-bbox="722 385 1502 416">FACTS OF THE CASE</p> <p data-bbox="722 416 1502 1635">In this case, the assessee is engaged in the business of trading in sweets and kulfi and filed his return under normal law for the year under consideration. During the year, the assessee has also received a gift from his relative. The assessing officer while finalizing the assessment under section 62 of the Income Tax Ordinance, 1979 has made some additions in the income of the assessee under section 13(1)(aa) as un-explained income. The assessee being dissatisfied, filed an appeal before the Commissioner of Income Tax, Appeals and Income Tax Appellate Tribunal whereby the Commissioner of Income Tax, Appeals has set aside the addition under section 13(1)(aa) of the Income Tax Ordinance, 1979 and directed the assessing officer to first investigate the genuineness of claim of gift after seeking clarification regarding the validity of wealth tax return, relationship between the donor and donee and mode of payment. The Income Tax Appellate Tribunal has also upheld the order of the Commissioner of Income Tax, Appeals. The assessing officer has again started the investigation. The Assessing Officer while re-finalizing the assessment, had admitted a smaller part of the gift as gift to the assessee and taxed the remaining amount/part of the gift on assumption that a wealthy person can not make a gift to any other person without having any blood relations. The assessee filed appeal before the Commissioner of Income Tax, Appeals, who has confirmed the order of the Assessing Officer. Being dissatisfied with the order of the assessing officer, the assessee filed appeal before the Income Tax Appellate Tribunal and contended that assessing officer has rejected the gift without cogent reasons. The assessee further contended that the Under Muhammadan Law every Muslim could make a gift to his brother in faith, hence for logic of disallowance of the gift was untenable in the eye of law. In support of his contention the assessee relied on reported judgments of the Income Tax Appellate Tribunal cited as 2007 PTD (Trib.) 651. As per the cited judgment the oral gift is a valid gift like a written gift and under Islamic law three conditions "Offer", "Acceptance" and "Possession" should exist to make a gift valid, which is present in the instant case. The assessee further contended that the addition under section 13(1)(aa) is not sustainable as it becomes operative where "the assessee is found to have made any investment or is found to be the owner of any money or valuable articles in the year.</p> <p data-bbox="722 1668 1502 1700">DECISION</p> <p data-bbox="722 1700 1502 1982">The Income Tax Appellate Tribunal, after hearing both parties, vacated the impugned order of the CIT(A) and stated that the action of the department is not sustainable in the law. ITAT has stated that as per the observations of the assessing officer, he is clear on the nature and source of the amount (gift amount) added by him in the income of the assessee but the assessing officer was not clear about the intention behind such source which is that the every wealthy person cannot part his hard earned possession through gift in the absence of any blood relation.</p>

CITATION	ISSUES INVOLVED
(2009) 100 TAX 378 (Trib.) Income Tax Appellate Tribunal	<p data-bbox="678 353 1312 383">SECTIONS 62 OF THE INCOME TAX ORDINANCE, 1979</p> <p data-bbox="678 387 927 416">FACTS OF THE CASE</p> <p data-bbox="678 421 1476 1473">In this case, the assessee company, wholly owned by the Federal Government of Pakistan, is engaged in providing transportation facilities in Northern Areas and Rawalpindi. Return was filed showing losses from operation in the area other than Northern Area and did not disclose receipts earned from Northern Areas. During the finalization of assessment proceedings for the year under consideration, the assessee has provided all the receipts earned for the year under consideration inclusive of Northern Areas receipts. The assessee stated that the Northern Area was not the part of Pakistan, hence receipts were previously kept undisclosed. The assessing officer has made reliance on the reported judgment of Supreme Court cited as 1999 SCMR 1379 has taxed the whole amount/receipts of Northern Area as territories of Pakistan. The assessing officer is of the view that as per Supreme Court's Judgment "the people of Northern Area are the citizen of Pakistan and they enjoy all the fundamental rights like any other citizen of Pakistan", hence they are liable to taxes prevailing in the country. The Assessee being aggrieved, filed appeal before the Commissioner of Income Tax, Appeals, who confirmed the order of the Assessing officer. Being dissatisfied from the action of the Commissioner of Income Tax, Appeals, the assessee has filed the appeal before the Income Tax Appellate Tribunal. The assessee contended that though the people of Northern Area, like any other citizens of Pakistan, are liable to pay only those taxes and levies that are competently imposed. The Assessee further contended that the applicability of the Income Tax Ordinance, 2001 in the Northern Area was withdrawn vide Notification No. NA 9(7)80 dated April 3, 1999 and since then, there is no valid piece of legislature/notification in existence regarding applicability of the Ordinance to Northern Areas of Pakistan after its withdrawal. So assessee strenuously argued that since the Income Tax Ordinance is not applicable to the people of Northern Areas, even so far after its withdrawal, the income earned from the territory of Northern Area is not taxable, so the income earned by the tax authorities is illegally and unjustifiably.</p> <p data-bbox="678 1512 803 1541">DECISION</p> <p data-bbox="678 1545 1476 1697">The Income Tax Appellate Tribunal, after hearing both parties, has set aside the orders of below authorities and remanded back the case assessing officer to finalize the assessment afresh after issuing the statutory notices to the assessee company to assess the income earned only from the areas other than the territories of Northern Areas.</p>

INDIRECT TAX

CITATION	SECTION	ISSUES INVOLVED
2009 PTD 1865 Lahore High Court	55,73,37,25	<p>In this case, the Collectorate Sale Tax Peshawar vide contravention report observed that during the audit it was observed that registered person adjusted input tax amounting to Rs. 395,200/- on purchase of soda ash but failed to produce the bank draft despite notices. An exparte order was passed against the present appellant. Appeal was also dismissed by the Collector (Appeals). After issuance of show Cause Notice last hearing was held on March 02, 2004, thereafter matter was not taken up for one year and five months. Later the appellant was informed that appeal was dismissed as he absented from the hearing willfully.</p> <p>It was held that first appellate court had not provided the adequate opportunity to appellant to plead the case at adjudication stage therefore order was set aside case was remanded to adjudication court to adjudicate the matter afresh after providing proper opportunity to the parties.</p>
2009 PTD 1949 Lahore High Court	S. 193 & 195 Custom Act, 1969	<p>Custom authorities conducted raid on the premises owned by the Petitioners and seized large quantity of imported paper, for which Petitioners could not produce any documentary proof. Petition raised plea that authorities could not detain and seize the goods without issuance of statutory notice.</p> <p>It was held that requirement of issuance of notice under 168 of Customs Act, 1969, started from the date of seizure. Detention and seizure of goods did not suffer from any illegality or even irregularity. Law was amended in years 2004 and 2005 and detention had become permissible under section 17 and 6 of Customs Act, 1969. High Court declined to interfere in proceedings conducted by authorities against Petitioners and dismissed the Petition.</p>

CITATION	SECTION	ISSUES INVOLVED
2009 PTD 1978 Lahore High Court	S. 11(4)	<p>In this case refund claim was rejected on the ground that invoice summary had not been submitted by the supplier of the appellant/taxpayer on examination invoice stood verified and objection raised with regard to non filing of summary invoice showed that objection were vague. Department once again asked for verification of documents, in question for removal of ambiguity.</p> <p>The Tribunal set aside the order and ordered to release the refund as claimed by the appellant.</p>
2009 PTD 1993 Tribunal	S. 3, 4, 10(2), 29. Sales Tax Rules & SRO 555(1)/2006	<p>Appellant was manufacturer of zero rated supplies and a registered person under Sales Tax Act, 1990 filed refund claim as per procedures provided under SRO 555. Refund receipt of the claim issued by the department confirmed that claim was complete in all respects and was also verifiable from computer system. A unique identification number was also issued. The department not only delayed processing of refund and detained the claim despite submission of all genuine documents but also made interpretations of relevant provisions of Sales Tax law according to their convenience to cover their own negligence, inattention and inaction to flout the clear cut mandate given by the legislature.</p> <p>Court adjudged the proceedings of the forums as illegal and improper. The impugned orders were set aside and appeal was allowed with direction to department to issued refund claim.</p>
2009 PTD 2216 FTO	155(E), Custom Refund Rules	<p>In this case Complaint was filed against non - payment of rebate claim by Model Collectorate of Customs against exports. Customs Department in reply stated that three cheques were issued and forwarded to the Complainant's address. Department could not confirm the receipt by the Complainant. Complainant stated that department should have proactively identified whether cheques were received by the addressee or not. It was possible for the department to locate such cheques.</p>

CITATION	SECTION	ISSUES INVOLVED
		It was held by the FTO that Customs department did not have proper reconciliation system whether cheques issued were delivered to the addressee or not. It recommended that investigation should be made that why the cheques were not delivered to the Complainant. To put in sustainable system for reconciliation of delivery or non delivery of cheques etc and report within reasonable time.