



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

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FROM THE DESK OF PRESIDENT

Pakistan is in a state of war from last few months and the dilemma is that is pushing us rigorously towards the jeopardy. Catastrophic law and order situation, dwindling business environment and depleting foreign reserves are some discretions which assaulted on our economy with immense brutality. The recent crash of the Dubai Market is one of the severe distresses which aggravated Pakistan, just because of the heavy involvement of Pakistanis there.

After glimpsing the current scenario, almost every mind asks the same question that how and when we will excrete out from this peril and what can be the potential panaceas for this problem to be initiated appropriately. Study divulges that, among the other causes and problems dearth of knowledge of prevailing laws within the country among the individuals and even among the professionals is a small part of it. This scarcity is not only on account for embarrassment but also it swelled the graph of motley imbroglios as well.

The major apprehension still lies under the concept, that who will take the brave step to demoralize trounce of these loopholes plausibly. Income Tax Bar Association is among those institutions which come on the front screen to condense the adverse repercussions of the current distress from our economy.

As, I have just mentioned earlier that the country is in a state of war and has to have a stringent eye over different provisions to vanquish different unethical issues like tax evasions. As the Income Tax Bar Association, is the largest Bar operating in the country, so it is its foremost duty to endow the laymen and even their bar members regarding the current situation of the economy and applicable laws by publishing News and Views and arranging the Seminars with due diligence.

We are pleased to inform that, we have overhauled on the issues to some extent spectacularly, which had hampered outrageously between our productivity and efficacy, but more has to done in order to bring our country again on the driving seat and we are optimistic that our we will accomplish our goal quite soon INSHA-ALLAH.

Regards,

Najam Irshad Khan

FROM THE DESK OF CONVENER

Mr. Najam Irshad identified and jotted down the right things under the umbrella of his message that our country is in a state of war and will require counter strategies to combat with the current discretion. It is a great sigh of relief for us that the problems, we had confronted before are now being overcome professionally. We must appreciate the steps of Income Tax Bar Association, which they have been taken in order to bring the economy again on the driving seat.

We have received an excellent feedback from our readers which induced us to publish yet another issue of News and Views which certainly enhances the tax base and will dampen the issues of tax evasions. Among the other initiatives, the implantation of Value Added Tax (VAT) instead of the sales tax was also a step to viable the economy pertinently, which has been taken by the FBR in recent NFC awards.

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, that we will achieve our optimal desire and fulfill over commitments soon Insha-Allah.

Here, I would like to also compliment my committee members & specially my office staff especially Mohammad Omar Shahid & Mohammad Umair Anwar who helped me with these publications.

Regards,

Mohammad Rehan Siddiqui

IMPORTANT CIRCULARS & NOTIFICATION/SROs

DIRECT TAX

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

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF. NO.
<p>C. No. ITP/B-2009-10-170/EC Circular No. 03 of 2009 Dated: July 17th, 2009 Circular No. 04 of 2009 Dated: July 18th, 2009 Circular No. 05 of 2009 Dated: August 18th, 2009</p>	<p>Contains explanation and clarifications regarding the Finance Act, 2009</p>	622
<p>C. No. ITP/B-2009-10(165) Circular No. 6 of 2009 Dated: August 18th, 2009</p>	<p>Through this circular, the Federal Board of Revenue has clarified that the amendments made vide Finance Act, 2009, in section 153 that the services rendered by the non-corporate taxpayers stand excluded from the ambit of final tax regime and tax deducted under section 153(1)(b) is to be treated as minimum tax. Further clarified that the services rendered by the corporate sector remains unchanged even after the recent amendments as services rendered/provided by corporate sector remain outside the scope of both the final tax regime as well as the minimum tax regime of section 153 of the Income Tax Ordinance.</p> <p>Minimum tax as provided under section 113 is, therefore applicable to the resident companies accordingly.</p>	623
<p>C. No. ITP/B-2009-10 170 Circular No. 9 of 2009 Dated: September 25th, 2009</p>	<p>In consideration of problem faced by the taxpayers for electronic filing of income tax return, FBR decided that returns of individuals and AOP's may be filed manually within prescribed time limits subject to the condition that the returns are to be e-file within two months from the last date of filing of such return. Further decided that the taxpayer may attach the list of challans which includes necessary details/particulars, but the actual proof of payments of taxes are required to be provided to tax office within thirty days from the date of filing of return.</p>	624

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF. NO.
C. No. 1(1)Chief ITP/2009 Circular No. 10 of 2009 28.09.2009	Employers are not required to file annual withholding tax statements if they had properly filed the monthly or quarterly withholding tax statements according to the law.	625
SRO/ Notification 626 (I)/2009 & dt. 07.07.2009 684 (I)/2009& dt. 23.07.2009	The Federal Board of Revenue has made electronic filing mandatory for the following: INCOME TAX RETURN FOR: - Persons registered under sales tax - Association of Persons; and WITHHOLDING TAX STATEMENT FOR: - Association of Persons	626
650(I)/2009 09.07.2009	IN SECOND SCHEDULE PART-I, NEW CLAUSE (132A) ADDED AS UNDER: "The Federal Government has directed that the profit and gain derived by Bosicor Oil Pakistan Limited is exempt from tax from for a period of seven and a half years from the day on which refinery is setup or commercial production is commenced, whichever is later".	627
660(I)/2009 16.07.2009	IN SECOND SCHEDULE PART-I, NEW CLAUSE (126E) ADDED AS UNDER: "The Federal Government has directed that Income derived by corporate zone developers for projects in the Special Economic Zones as announced by the Federal Government is exempt from tax for a period of ten years from the date of start of developmental activity".	628
697(I)/2009 & dt. 25.07.2009 718 (I)/2009 & dt. 11.08.2009	Vide this notification the Federal Board of Revenue has published the draft Income Tax Return Forms (For Individual and Association of Person) 1). Annexure-A (Chart of Tax Depreciation & Adjustments). 2). Annexure-B (Chart of Tax Payments).	629
712(I)/2009 05.08.2009	IN SECOND SCHEDULE PART-IV, NEW CLAUSE (71) ADDED AS UNDER: "The provisions of this Ordinance shall not be applicable to the M/s. TAISEI Corporation under the agreement between National Highway Authority, GOP, which falls under the zero rated regime of sales tax and registered with sales tax in respect of supply of products, services and equipments".	630

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF. NO.
717(I)/2009 12.08.2009	In order to provide relief to the large trading houses, the Federal Board of Revenue has exempted the Companies Operating Trading Houses from the Provision of section 148 of the Ordinance.	631
803(I)/2009 09.09.2009	Federal Board of Revenue has directed to companies and non-company taxpayers to file return electronically in the case of refund.	632
810(I)/2009 19.09.2009	The income of ECO Trade and Development Bank is exempted from tax and provision of section 150, 151, 152, 153 and 233 shall not apply in respect of payments made to The ECO Trade and Development Bank	633
820(I)/2009 25.09.2009	Double Tax Treaty entered between the Governments of the Islamic Republic of Pakistan and Bahrain.	634
833(I)/2009 29.09.2009	Federal Board of Revenue has provided exemption to Islamic Chamber of Commerce and Industry (ICC&I) and Commission on Science and Technology for Sustainable Development in the South (Comsats).	635

INDIRECT TAX

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF. NO.
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SRO 704(1)/2009 30.07.2009	Sale Tax Special Procedure Withholding Rules, 2007 amended and Large Taxpayers Unit registered persons purchasing from a non Large Taxpayers Unit registered person obligate to deduct and deposit one percent of value of taxable supplies from payment due to the supplier.	636
SRO 799(1)/2009 11.09.2009	SRO 501/2004, 732/2006 and 1021 of 2006 rescinded. Rescission of the Refund Sales Tax (on export of specified goods) Rules, 2006 and the processing of refund claims of large Taxpayers Rules, 2007.	637
SRO 769(1)/2009 19.09.2009	SRO 769/2009 dated 04 September superseded and to avoid misuse of zero rating allowed on import and supply of polyethylene and polypropylene used for manufacture of monofilament yarn and net cloth, Federal Government provided safeguard rules, conditions specified in the SRO.	638
STGO 35/2009 15.08.2009	To mitigate hardship faced by the insurance companies, the Board has allowed such companies extension in the time limitation for issuance of Debit Credit Note from 180 days to 365 days.	639
Circular 4/2009 15.08.2009	Board specified that amendment notified under SRO 603(1)/2009 dated 25 June 2009 in the Sales Tax Withholding Rules, 2007 shall take effect from July 01 July 2009. This was implemented SRO 719.	640

CORPORATE

CIRCULAR/SRO/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF. NO.
Circular No. 23 of 2009 01.07.2009	Companies Regularization Scheme announced through Circular No.17 of 2009, providing the defaulter companies, other than listed companies, an opportunity to regularize their defaults through filing overdue returns and annual accounts on payment of normal filing fees, with waiver of additional fees and penalty expired on 30.06.2009 extended upto 31.07.2009.	641
Circular No. 25 of 2009 19.08.2009	In order to streamline the processing of applications for granting insurance surveying licensees and registration of ASOs under S.112 & S.113 of Insurance Ordinance, 2000 the Commission will entertain such applications twice a year and procedure thereof specified.	642
Circular No. 26 of 2009 24.08.2009	Amendments made vide SRO 388(I)/2009 dated 12.05.2009 in Second Schedule to the Modaraba Companies and Modaraba Rules, 1981 withdrawn vide SRO No. 746(I)/2009 dated 21.08.2009. The fees deposited in compliance with withdrawn SRO shall be adjusted in future on receipt of requests in this regard.	643
Circular No. 27 of 2009 03.09.2009	Clarification of regulations No. 37 and 38 of the Non-Banking Finance Companies and Notified Entities Regulations, 2008.	644
Circular No. 28 of 2009 04.09.2009	Additional condition to Modaraba Authorization Certificate for appointment of statutory auditors - chartered accountants from specified list of chartered accountants firms.	645
Circular No. 29 of 2009 09.09.2009	Additional conditions imposed for conducting business by Modaraba to safeguard against involvement in money laundering activities, terrorist financing and other illegal trades.	646
Circular No. 30 of 2009 18.09.2009	Comments invited on SRO 667(I)/2009 dated 16.07.2009 issued by Ministry of Foreign Affairs (Disarmament Division) for implementation of sanctions imposed by United Nations Security Council against Democratic People's Republic of Korea (DPKR).	647

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF. NO.
Circular No. 31 of 2009 08.10.2009	In exercise of powers conferred under section 2 of the Anti Money Laundering Ordinance, 2007, the Ministry of Finance has notified vide SRO ___(I)/2009 dated 01.10.2009 that any transactions exceeding Rs.2.5 million shall be reported as Currency Transaction Report (CTR) to Financial Monitoring Unit.	648
Circular No. 32 of 2009 09.10.2009	Minimum Requirements for Undertaking Discretionary and Non-Discretionary Portfolio Management for eligible investors specified for Non-Banking Finance Companies licensed to provide Investment Advisory Services or Investment Finance Services under the Non-Banking Finance Companies (Establishment & Regulations) Rules, 2003 and the Non-Banking Finance Companies and Notified Entities Regulations, 2008.	649
Circular No. 32 of 2009 27.10.2009	Directions to all Insurers/Takaful Operators to ensure submission of prescribed information with supporting evidences in respect of Reinsurance/re takaful treaty agreements as required under Securities & Exchange Commission (Insurance) Rules, 2002 and Insurance Ordinance, 2000.	650
Circular No. 33 of 2009 28.10.2009	Allocation of sharing costs of Insurance Ombudsman's Secretariat by Insurance/Takaful Companies.	651
Circular No. 34 of 2009 30.10.2009	To inculcate good governance in business conduct of Brokers of Stock Exchanges and National Commodity Exchange, to promote transparency and safeguard public interest, SECP directed to ensure effective implementation and compliance with relevant regulatory frame work.	652
Circular No. 35 of 2009 30.10.2009	Mandatory Certification Requirement with immediate effect for Sales Agents of Asset Management Companies (AMCs) and Pension Fund Managers (PFMs).	653
SRO 653(I)/2009 01.07.2009	Delegation of powers to SECP to frame rules in respect of matters specified in S.11(3)(c), S.35(2) & (7) and S.114 of the Insurance Ordinance, 2000, subject to prior approval of the Federal Government and as per procedure laid down in S.167(2).	654

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
SRO 654(I)/2009 09.07.2009	Delegation of powers of functions of SECP to the Commissioner and Officers of Securities Market Division to Executive director and Director, subject to conditions and limitations.	655
SRO 658(I)/2009 14.07.2009	Delegation of powers to the Registrar, Additional Registrar, Joint Registrar in the matters of companies falling in their jurisdiction.	656
SRO 659(I)/2009 14.07.2009	Delegation of powers and functions of the Commission to Commissioner, Company Law Division (Registration Department).	657
SRO 666(I)/2009 16.07.2009	Delegation of powers and functions of the Commission to Commissioner and Officers, in respect of insurance companies, whether listed or not.	658
SRO 738(I)/2009 19.08.2009 Superseded By SRO781(I)/2009 07.09.2009	Amendment in Rule 3(4)(j) of the Companies (Invitation and Acceptance of Deposits) Rules, 1987 regarding amount received by way of security or an advance from any purchasing agent, selling agent or other agent in the ordinary course of business of the company or an advance received against orders for the supply of goods or properties for rendering services.	659
SRO 746(I)/2009 21.08.2009	Certain amendments made in the Second Schedule to the Modaraba Companies and Modaraba Rules, 1981 by SRO 388(I)/2009 dated 12.05.2009 treated as cancelled/withdrawn.	660
SRO 764(I)/2009 02.09.2009	Certain amendments made in Non-Banking Finance Companies and Notified Entities Regulations, 2008.	661
SRO 781(I)/2009 07.09.2009	Amendments made in Rule 3(4)(j) of the Companies (Invitation and Acceptance of Deposits) Rules, 1987 substituting earlier amendment made by SRO 738(I)/2009 dated 19.08.2009.	662
SRO 794(I)/2009 10.09.2009	Specification of prescribed fees for registration/renewal of certificate of registration as a broker by a member of commodity exchange under Commodity Exchange and Future Contracts Rules, 2005.	663

CIRCULAR/SROS/
NOTIFICATIONS
REFERENCE

SUBJECT

ITBAK
LIBRARY
REF: NO.

SRO 886(I)/2009
13.10.2009

Extension of period until June 30, 2010 for
compliance by Non-Banking Finance
Companies of amendments made by SECP.

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SYNOPSIS OF IMPORTANT CASE LAWS

DIRECT TAX

- Note:** (1) Members are advised to read the complete judgement for better understanding of the respective issues.
(2) Income Tax Ordinance, 2001 is referred as the Ordinance and Income Tax Ordinance, 1979 is referred as Repealed Ordinance.

CITATION	ISSUES INVOLVED
(2009)Tax177 The Supreme Court of Pakistan.	SECTION 120, 120A(1), 122(1)(5) INVESTMENT TAX SCHEME FACTS OF THE CASE In this case assessee availed benefit under CBR Circular No. 7 of 2008 but declaration filed by the assessee in respect of undisclosed, untaxed and unexplained income rejected by the department with the ground that pending proceeding did not qualify as per circular No.8 of 2008. DECISION The Honorable Supreme Court of Pakistan allowed appeal of the assessee with remarks that circular 8 of 2008 cannot apply retrospectively and the impugned judgment of the Honorable High Court is not sustainable in law.
(2009) 100 Tax 49 High Court Karachi	SECTION 156, 221 OF THE INCOME TAX ORDINANCE 2001 SECTION 2(F) OF THE WWF ORDINANCE 1971 FACTS OF THE CASE In this case, applicant voluntarily paid WWF, filed return and the assessing officer assessed accordingly whereas the assessee exempt under section 2(f)(vi) of the WWF Ordinance 1971. The applicant moved rectification application under section 156 of the Income Tax Ordinance 1979 contending that applicant was exempted from WWF, therefore, the bonafide mistake being apparent from the record should be rectified. Rectifications are denied on various stages. DECISION It was held by the Honorable High Court that the (a) rectification application is maintainable under section 221 of Income Tax Ordinance 2001. (b) applicant is entitled for exemption from the levy of WWF under section 2(f)(vi). (c) majority shares of the company are held by Government, therefore, it falls in category exempt from WWF
(2009) Tax 1 High Court Lahore	SECTION 234A & 235 FACTS OF THE CASE In this case, petitioners take plea against collection of Tax in CNG & electricity bills under section 234A and 235 of the Income Tax Ordinance 2001 are intra Vires of constitution of Pakistan 1973, Article 25,

CITATION

ISSUES INVOLVED

2009 PTD 1715
Lahore High Court

DECISION

It was held by the Honorable High Court that section 234A and 235 of the Income Tax Ordinance 2001 are intra vires the Constitution of Islamic Republic of Pakistan, 1973 and no exception can be taken thereto.

The tax collected from person other than a company is the property of the assessee and is available for adjustment against any other charges under the Ordinance, the surplus, if any, thereafter is liable to be refunded to the assessee.

**SECTION 127, 137 OF THE INCOME TAX ORDINANCE, 2001
FACTS OF THE CASE**

In this case, the petitioner filed appeal for stay against the recovery proceedings. These proceedings were started against that order which was confronted by the assessee in appeal to higher authorities and was pending for adjudication. The petitioner contended that these recovery proceeding render the entire process of filing the appeal in-fructuous, as the application of interim relief and the appeal in question is pending for adjudication.

DECISION

It was held by the Hon'ble High Court that in above case the respondent/department shall not affect the impugned recovery till the application for the interim relief or appeal in question is finally decided.

2009 PTD 1557
Lahore High Court

**SECTION 122 & 221 OF THE INCOME TAX ORDINANCE, 2001
FACTS OF THE CASE**

This instant case distinguishes powers and authorities of different Income Tax Authorities under the prevailing Ordinance and the repealed Ordinance. The taxpayer received a notice of rectification under section 221 of the Ordinance, 2001 from the Commissioner regarding prior years matter that were pending at the time of promulgation of new ordinance. The taxpayers being aggrieved filed writ petition before the High Court against the aforesaid notice and contended that the Commissioner is not empowered to issue the above notice because under the repealed ordinance Taxation Officer is the assessing Authority who was also empowered to issue rectified orders. However under the new Ordinance the Commissioner is the assessing authority and only he who can rectify the order passed by him. Since the Commissioner was not an assessing authority in the repealed ordinance and the order was passed by the Taxation Officer therefore, Commissioner under the new Ordinance cannot rectified the order passed under the repealed ordinance.

DECISION

The High Court allowed the petition and further ordered that the consequent proceedings on the basis of the notices shall also crumble to ground on the basis of the judgment referred as PLD 1987 Quetta 235 re! Syed Allah Dost Vs. Haji Mohammad Alam.

CITATION	ISSUES INVOLVED
2009 PTD 1707 Lahore High Court	<p>SECTION 80D, 80C & 80D OF THE INCOME TAX ORDINANCE, 1979</p> <p>FACTS OF THE CASE</p> <p>In this case, the High Court defines the scope of the section 80D of the repealed Ordinance. The departmental contention was that the minimum tax under section 80D is levied on all sources of income on which no withholding taxes have been deducted. In support of their contention, they stated that the taxpayer is required to file the statement under section 143B if they have FTR income and return of total income under section 55 if they have Normal law income, so minimum tax is calculated on income declared in return not on statement under section 143-B. ITAT has decided the case against department and state that turnover tax is leviable on aggregate of turnover including FTR receipts with no exceptions. Being dissatisfied department filed appeal against the decision of the ITAT in High Court.</p> <p>DECISION</p> <p>High Court dismissed the appeal after upholding the verdict of the ITAT that 80-D can not be applied on each and every sources of income of a taxpayer separately and it has to be on the aggregate of the turnover of the taxpayers from all sources. The direction of the ITAT to charge it on the aggregate of section 80-C or 80-CC after inclusion of the turnover from other sources like local sale, etc., which is not subject to withholding tax, needs no exception.</p>
(2009)PTD 174 Lahore High Court	<p>SECTION 133(4) & 136 OF THE INCOME TAX ORDINANCE, 2001</p> <p>FACTS OF THE CASE</p> <p>In this case, CIT filed reference application to the Honorable High Court against ITAT rejection of miscellaneous application under section 133(4) of the Income Tax Ordinance 2001.</p> <p>DECISION</p> <p>The Honorable High Court held that no reference can be filed against the order of refusal of miscellaneous application of rectification. However, if the learned Tribunal rectified order would become a part of the original order.</p>
2009 PTD 2654 (2009) Lahore High Court	<p>SECTION 77 OF THE INCOME TAX ORDINANCE 1979</p> <p>SECTION 237 OF THE INCOME TAX ORDINANCE 2001</p> <p>FACTS OF THE CASE</p> <p>In this case, the Director of a public limited company (Not quoted) filed write petition against the order of the department to pay the tax which basically was due against the company and the Taxation Officer show intention of attachment as well as sale of director personal property.</p> <p>Further, contention of the petitioner that the Income Tax Ordinance 2001 cannot apply on earlier assessment year.</p>

CITATION

ISSUES INVOLVED

(2009) TAX 24
Income Tax Appellate
Tribunal

DECISION

The Honorable High Court dismissed the petition with the directions to the petitioner to file appeal under Rule 194 of the Income Tax Rules 2002 as the Federal Board of Revenue have power under section 237 of the Income Tax Ordinance 2001.

SECTION 113, 221 OF THE INCOME TAX ORDINANCE 2001

FACTS OF THE CASE

In this case, assessee filed revised return for rectification of mistake in compliance to show cause notice but the assessing Officer without issuing notice passed fresh order and did not consider the rectification.

CIT(A) had rejected the assessment order passed by the assessing officer on the basis that the taxation officer without issuing any notice and render fresh order has invoked the provision of section 221 of the Income Tax Ordinance 2001, which is not tenable under the law.

DECISION

The Honorable ITAT also dismissed the appeal on the ground that assessing officer violating provision of law.

(2009) PTD (Trib.) 1716
Income Tax Appellate
Tribunal

SECTION 170(4) & 153(1)(B), INCOME TAX ORDINANCE, 2001

FACTS OF THE CASE

In this case, the assessee claimed the refund of excess deduction of taxes. The principal business activity of the assessee was Services. The taxation officer rejected the refund application on the grounds that the services rendered by the assessee does not fall under the ambit of section 153(9), hence the services rendered by the assessee fell under the ambit of Final Tax Regime (FTR) and therefore, refund can not be allowed. Assessee being aggrieved filed an appeal before Commissioner Income Tax - Appeals (CIT (A)), who had allowed the refund to the assessee. The department being dissatisfied with the order of CIT(A), filed an appeal before the ITAT.

DECISION

The ITAT, after hearing the both parties, stated that I find no reason to deviate from the order of CIT(A). In deciding the case, the ITAT placed reliance on the earlier judgment of Honorable Lahore High Court reported case vide 2008 PTD 1243 and ITAT vide 2006 PTD 1936 whereby all the services be that of any form are held to be chargeable under the general tax provision and is not full and final discharge of tax liability.

(2009) TAX 41
Income Tax Appellate
Tribunal

SECTION 6, 18, 21, 39, 49(2), 49(4) AND 8(5)

FACTS OF THE CASE

In this case, Assessee is a local authority and derives Income from license fee and interest from Bank deposit.

The Addl. Commissioner of Income Tax amended the assessment order and exemption of Profit and Loss Account expenses claimed on the plea of local authority rejected.

CITATION	ISSUES INVOLVED
(2009) TAX 101 Income Tax Appellate Tribunal	<p>DECISION The Hon'ble ITAT accepted appeal with the directions that income from consultancy receipts should be assessed as income from business and claim of expenses against business income should be considered on merits accordingly.</p> <p>SECTION 161 & 205 OF THE INCOME TAX ORDINANCE 2001 FACTS OF THE CASE In this case short deduction of withholding tax had been made. The assessing officer passed a fresh order, which had been challenged by the assessee</p>
(2009) 100 Tax 113 Income Tax Appellate Tribunal	<p>DECISION It was held by the ITAT that fresh assessment order is illegal in respect of any omission or error incurred. It should be rectified u/s 221 of Income Tax Ordinance 2001. Fresh assessment will be a case of double assessment which is not permissible.</p> <p>SECTION FACTS OF THE CASE In this case, two cross appeals were filed. The assessee claimed proration of advertising expenses to import sales but the assessing officer added them to normal income whereas the department filed appeal against order of CIT(A) regarding deletion of obsolete store and spare, allowing of prorating royalty & technical fees, deletion of addition 50% expenditure for next year, deletion of addition actuarial losses, deletion of addition of administration and selling expenses and directing to allow initial depreciation</p>
2009 PTD (Trib.) 1297 Income Tax Appellate Tribunal	<p>DECISION The Honorable High Court dismissed appeal of the department and allowed appeal filed by the assessee.</p> <p>SECTION 154, 162 & 218 (5) OF INCOME TAX ORDINANCE, 2001 FACTS OF THE CASE In this case, the taxation officer served an order upon the taxpayer under section 162 of the Ordinance for the recovery of short deduction without serving any notice upon taxpayer or not provided any opportunity of being heard. The Commissioner of Income Tax Appeals [CIT(A)] annulled the impugned order passed by the taxation officer. The Department challenged the order of the CIT(A) before Income tax Appellate Tribunal (ITAT).</p>
	<p>DECISION After considering the views of both parties, the ITAT has dismissed the departmental appeals and stated that we find no warrant to interfere in the impugned order of the CIT(A) which is upheld as the taxation officer has passed the order without affording the opportunity of being heard to the assessee.</p>

INDIRECT TAX

CITATION	SECTION	ISSUES INVOLVED
2009 PTD 1176 Tribunal	33, 34, 36, 2(9), 3, 6&26	<p>In this case, the appellant failed to deposit the sales tax due and also deposited the sales tax after due date, moreover the appellant failed to file sales tax returns. A show cause notice was issued accordingly for recovery of tax along with additional tax and penalty for violations of the law. Appellant deposited the dues under amnesty scheme offered vide SRO 520(I)/99, dated 30 April, 1999. The department insisted for recovery of additional tax and penalty which was challenged by the appellant on the ground that payment of additional tax was not warranted as principal amount of tax was already deposited.</p> <p>It was held by the learned tribunal that as the department has confirmed that principal amount is not outstanding therefore demand of additional tax and penalty must be waived. Order in Original was modified to that extent.</p>
2009 PTD 1179 FTO	20	<p>In this case the Complainant alleged against the Assistant Collector of Sales Tax (Registration) East for neglect, inattention and delay in making necessary change of address in Registration Certificate. The Respondent submitted that while processing the application necessary documents were not found enclosed for which letter was issued to the Complainant but the required documents were never provided so the matter remained pending.</p> <p>It was held by the FTO that though the Complainant used wrong proforma and referred to incorrect SRO while notifying the change of address but the concerned officers were supposed to know the law and procedure and record the correct business address in the certificate without loss of time. The alleged maladministration was proved and it was recommended that Member Sales Tax, FBR issue general instructions to all Collectors in the light of observations made by FTO and also report compliance within 45 days</p>
2009 PTD 1220 LHC	46 & 48	<p>In this case the Appellate Tribunal granted interim relief which lapsed after the expiry of six months rendering the petitioner liable to coercive recovery. The Petitioner prayed that the pre-mature recovery of impugned dues, was harsh as an assessee was entitled to independent adjudication of his challenge to the tax liability.</p>

CITATION	SECTION	ISSUES INVOLVED
		Recovery was stayed by the court and it was held that the petitioner shall appear before the learned Appellate Tribunal through an appropriate application seeking final adjudication of his pending appeal and tribunal shall decide the matter within a period of three months from the date of receipt of the order of the court.
2009 PTD 1222 Tribunal (Sales Tax)	433(2), 3, 6, 11(2) & 26	In this case the registered person appeal of the appellant was dismissed on merits without giving opportunity of hearing. The appellant filed an application for recall of order which was contested by the respondent on the ground that proper remedy for appellant was to file an appeal before the High Court.
		It was held by CESTAT that the remedy in the case was to file restoration application and not the appeal. Further rules of procedure should not be too technically applied and parties should not be knocked out on technical grounds. The tribunal has powers inherent in it to keep the proceedings in correct and legal parlance. The application was accepted and appeal was restored for hearing.
2009 PTD 1263 Tribunal (Sales Tax)	433(2), 3, 6, 11(2) & 26	In this show cause notice was issued on the ground that Sales tax was paid on whole sale cash price instead of retail price printed on carton and alleged that short amount was recoverable along with additional tax. Tax payer contended that order passed was barred by time as it should have been passed with 45 days and if that period was to be extended it could be for 45 days and further 90 days with some cogent reasons but show cause notice was issued on 31 August 2001 and adjudication order had been on 30 June 2005, with the delay of 4 years, which was beyond the limitation prescribed under the law.
		The learned Tribunal accepted appeal and set aside the order.
2009 PTD 1702 Islamabad High Court	2(16)(17)(33) & 3	In this case Petitioner received medical products from their manufacturers and after passing those through the process of sterilization returned the same to manufacturers for which the petitioner charged sterilization charges. Authorities demanded sales tax on the plea that such activity was manufacturing thus liable to Sales Tax.
		It was held by the court that sales tax is leviable either on the value of the taxable supplies or on the value of the goods imported into Pakistan. The transaction is neither a sale nor lease nor disposition of goods. The process of sterilization does not fall within the definition of manufacture. Sales Tax reference was disposed off.