



# News & Views

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

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## UP COMING EVENT

- Informal Discussion on  
E-filing of Income Tax Returns
- Seminar on Group Taxation

**FROM THE DESK OF PRESIDENT**

*The Prophet Muhammad (peace be upon him) had exhorted His adherents to solicit knowledge, even if one has to go to china to gain it. That is a very powerful exhortation indeed, and one which underlines the importance given to knowledge, to learning, to using one's God-given thinking ability.*

*The country has been on a roller coaster ride since past 6 decades and the causes are not unfamiliar, dwindling law and order situation and depleting foreign reserves are some part of the causes. From the current scenario, a major question arise recurrently in almost every person's mind that, why we are unable to overcome on the different consternations and circumstances our country had envisaged from a number of years.*

*It has been observed that, there is a scarcity of knowledge being found not only amongst the laymen but even among the professionals, which not only swelled the discretions but also pushed the country on the verge of the bankruptcy.*

*The major concern lies under this concept that who will take the initiative, who will take the brutal step to undermine the trounces of dearth of knowledge plausibly. A numerous number of institutions come on the front with the intentions to endow the people regarding the economy and applicable laws in the country. The Income Tax Bar Association is amongst those institutions which contemplated on these issues in an appropriate manner.*

*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 enhances the quality of the bar members. The Income tax bar arranges seminars frequently to give knowledge to the bar members and the general public at large.*

*The recent action from the Federal Board of Revenue (FBR) ,really adds a remarkable value in the smooth functioning of the economy as the statements of income tax which were previously filed manually, can now be filed electronically. The Board has taken the stringent action into consideration to broaden the tax base within the premises of the country. The board has introduced strict penal proceedings to vanquish tax evasions.*

*It is pertinent to mentioned that, we have countenanced a number of issues which really intervened in our productivity and goodwill, but current rigorous and soul provoking actions will inevitably supports us to overwhelm on the previous problems and start a new hopeful excursion towards success.*

**Najam Irshad Khan**

**FROM THE DESK OF CONVENER:**

*It has been observed that the complexities among the Income Tax Profession has been mounting for a number of years, but I really appreciate the steps of the Income Tax Bar Association, which really endeavoring hard to condense this threat accordingly.*

*Due to the excellent positive feedbacks and appreciation, we received, in response of our previous publications really persuaded us to publish yet another issue before the readers, which has different revamping strategies to broaden the tax base within the country.*

*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 2009 to June 2009.*

*To attain the above goal, it is the Bar's myth 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 half year up to June 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. Members, I shall be personally obliged if I could get your feedback on the issue so that we can further improve this publication.*

Regards

**Muhammad Rehan Siddiqui**

## IMPORTANT CIRCULARS & NOTIFICATIONS/ SROS

### DIRECT TAXES

CIRCULAR/ SRO/ NOTIFICATION REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
<p>Circular No. 1 of 2009 Date: February 07, 2009 No. C.1 (23) WHT/05-Pt</p>	<p><i>Vide this circular, clarification is provided for the adjustments of payment made through ledger accounts that "the person who is making such inter-account adjustments is required to withhold tax under clause (b) of section 158 of the Ordinance at the relevant rates".</i></p>	575
<p>Circular No. 02 of 2009 Date: March 26, 2009 No. C.4(12) ITP2007-S-233A</p>	<p><i>Vide this circular, FBR has clarified that the tax deducted under clause (c) of sub-section (1) of section 233A of the Ordinance is belongs to the seller of shares and member is as intermediary between stock exchange and the seller. Further clarified that the Member would certify the quantum of tax withheld from each person, traded through him and shall furnish a statement to the concerned Director General, RTO, for the verification of claim of the taxpayers who traded the shares through him.</i></p>	576
<p>SRO 129(I)/2009 Date: February 07, 2009</p>	<p><i>Federal Government has directed that the withholding taxes on imports shall not apply in respect of imported goods or classes of goods for the execution of contracts by contractor and sub-contractors engaged in the execution of power project under agreement between the Islamic Republic of Pakistan and HUB Power Company Limited.</i></p>	577
<p>SRO 301(I)/2009 Date: April 07, 2009 SRO 392(I)/2009 Date: May 19, 2009</p>	<p><i>Federal Board of Revenue has published few amendments in the Income Tax Rules, 2002.</i></p>	578
<p>SRO 389(I)/2009 Date: May 19, 2009</p>	<p><i>Federal Government directed that any amount donated to the Prime Minister's Special Fund for victims of terrorism are exempt from taxes.</i></p>	579
<p>SRO 403(I)/2009 Date: May 23, 2009 SRO 460(I)/2009 Date: June 11, 2009</p>	<p><i>Vide this notification; the FBR has published the form for registration of taxpayers and related instructions for the issuance of the registration certificate.</i></p>	580
<p>SRO 416(I)/2009 Date: May 27, 2009</p>	<p><i>This notification is related with the Capital Value Tax Rules, 1990 wherein the FBR has published the application to the registration authority for the purchase of immovable property.</i></p>	581
<p>SRO 576(I)/2009 Date: June 18, 2009</p>	<p><i>Vide this notification, the FBR has directed that the any amount donated to the Chief Minister's (Punjab) relief Fund for Internally Displaced Persons (IDPs) of NWF is exempt from tax and further directed that the Income derived by Chief Minister's (Punjab) Relief Fund for Internally Displaced Persons (IDPs) of NWFP.</i></p>	582

SRO 606(I)/2009  
Date: June 29, 2009

*The Federal Government directed that the profit and gains derived by a taxpayer from an industrial undertaking setup in Export Processing Zone, Gwadar, is exempt from tax for a period of ten years beginning with the month and year in which the industrial undertaking is setup or commercial operation commenced, whichever is later.*

583

## INDIRECT TAXES

CIRCULAR/ SRO/ NOTIFICATION REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
SRO 68(1)/2009 Date: January 27, 2009	Manufacturers allowed refund/adjustment on amount of sales tax paid on purchase of raw material in the mentioned agricultural machinery.	584
SRO 168(1)/2009 Date: February 19, 2009	WAPDA entitled to claim input tax paid by it on Price differential of low Sulphur Furnace Oil and High Sulphur Furnace Oil to PSO on behalf of KAPCO for generation of electricity by KAPCO.	585
SRO 227(1)/2009 Date: March 04, 2009	SRO 69(1)/2006 amended and sales tax also levied on "rape seed and sunflower seed"	586
SRO 394(1)/2009 Date: May 21, 2009	Federal Board empowered every Collector to condone time limit where time limit is provided for any act, cases etc subject to certain limitations.	587
SRO 429(1)/2009 Date: June 02, 2009	Sales Tax Registration Rules, 2006 amended and Registration forms substituted.	588
SRO 473(I)/2009 Date: June 13, 2009	Cinematographic film under specified PCT heading added to the list of goods exempted from sales tax	589
SRO 476(I)/2009 Date: June 13, 2009	SRO 542 (I)/2008 amended whereby sales tax on import of Cellular telephone sets reduced from Rs. 500/- to Rs. 250/- per set effective from 1 July 2009.	590
SRO 477(I)/2009 Date: June 13, 2009	Sulphate added to the list of ingredients of poultry and cattle feed, which is exempt from sales tax on import and supply.	591

## CORPORATE

CIRCULAR/ SRO/ NOTIFICATION REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
Circular No. 1 of 2009 Date: January 06, 2009	Valuation of Debt Securities and Provisioning criteria for Non-performing Debt Securities held by Collective Investment Schemes for determining daily Net Asset Value (NAV).	592
Circular No. 2 of 2009 Date: January 14, 2009	Directive for reporting of trade information by all Asset Management Companies dealing in debt securities to the Mutual Funds Association of Pakistan as and when they execute transactions (buy or sell trade) in a debt security.	593
Circular No. 3 of 2009 Date: February 16, 2009	Clarification for valuation of available for sale of Investments for purposes of application of Regulation 16(1)(a) of Part A and B to the Annexure II – "Statements required to be filed by Life and Non-Life Insurers" of the Securities and Exchange Commission (Insurance) Rules, 2002.	594
Circular No. 4 of 2009 Date: February 27, 2009	Partial modification of conditions spelt out in Circular No. 29/2008 dated December 24, 2008 for Grant of License to Associations not for Profit under section 42 of the Companies Ordinance, 1984.	595
Circular No. 5 of 2009 Date: February 27, 2009	Relaxation in IAS 39 made by SECP and notified vide SRO 150(I)/2009 dated February 13, 2009 in respect of "Accounting Treatment for Equity Securities" applicable to Modarabas.	596
Circular No. 6 of 2009 Date: March 06, 2009	Amendments made in Circular No. 1 of 2009 dated January 06, 2009 in regard to effective date for determination and announcement of Valuation of Debt Securities on a daily basis by MUFAP extended to July 01, 2009. However, in case of traded debt securities, valuation shall be determined and announced on a daily basis by MUFAP in accordance with the procedure laid down in Chapter 2 of Circular No. 1 of 2009.	597
Circular No. 7 of 2009 Date: March 06, 2009	Criteria for categorization of the open-end Collective Investment Schemes on the basis of investment parameters including eligible asset classes with pre-specified risk profile to enable the investors to make informed decisions and to bring uniformity in the mutual funds industry for comparing performance of various open-end Collective Investment Schemes.	598
Circular No. 8 of 2009 Date: March 12, 2009	Inclusion of M/s. Naveed Zafar Hussain Jafry & Co. Chartered Accountants in the panel of Auditors for Modarabas with immediate effect and until further orders.	599

Circular No. 9 of 2009 Date: March 25, 2009	All Modaraba Companies directed to transmit an electronic copy of the periodic statements under the Prudential Regulations for Modarabas in Microsoft Excel Format to specified e-mail addresses, in addition to hard copy. Such periodic statements for January and February, 2009 directed to file immediately and subsequent statements through post and electronic mail within time limit provided in Circular 10/2002.	600
Circular No. 10 of 2009 Date: March 26, 2009	Conditions applicable for shares/modaraba certificates of Promoters/Major shareholders of Modaraba Management Companies/Modarabas physically deposited with SECP and new procedure to be followed for depositing such shares with CDC along with requisite fees.	601
Circular No. 11 of 2009 Date: March 26, 2009	Directive to all the Asset Management Companies (AMCs) to comply with specified formalities in respect of collective investment schemes managed by such AMCs to bring the mutual fund industry in-line with the international best practices and to bring uniformity in dealings	602
Circular No. 12 of 2009 Date: April 28, 2009	Instructions for customers due diligence to safeguard NBFCs against involvement in money laundering activities, terrorist financing and other illegal trades.	603
Circular No. 13 of 2009 Date: May 04, 2009	Directive to Asset Management Companies (AMCs) to comply with specified procedure/formalities and approved provisioning policy for non-performing debt securities of Collective Investment Schemes in order to ensure fair determination of Net Asset Value (NAV).	604
Circular No. 14 of 2009 Date: May 04, 2009	Requirements specified for Investments by close-end schemes in its own certificates and subsequent re-sale of such certificates.	605
Circular No. 15 of 2009 Date: May 04, 2009	Two additional conditions imposed with immediate effect for conducting the business by Modarabas. Such additional conditions shall be deemed to be part of the conditions of the Authorization Certificate issued to the Modaraba Company.	606
Circular No. 16 of 2009 Date: May 05, 2009	Reconstitution of the Religious Board in pursuance of Section 9 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 read with Rules 6 of Modaraba Companies and Modaraba Rules, 1981.	607
Circular No. 17 of 2009 Date: May 13, 2009	Re-launching of "Companies Regularization Scheme" for all non-listed public companies, private companies and associations not for profit, trade organizations, companies limited by guarantee and foreign companies for filing of overdue returns/annual accounts by payment of normal filing fee without payment of any additional late fees and no penalty for defaults committed upto December 31, 2008. Scheme valid from May 15, 2009 to June 30, 2009. Subsequently, validity extended upto July 31, 2009 by Circular No. 23 dated July 01, 2009.	608

Circular No. 18 of 2009 Date: June 01, 2009	Revised Second Schedule to the Modaraba Companies and Modaraba Rules, 1981 issued regarding revision of scale of fees notified by SRO 388(I)/2009 dated May 12, 2009 circulated.	609
Circular No. 20 of 2009 Date: June 23, 2009	Requirements for approval of merger of Open End Schemes by Asset Management Companies specified.	610
Circular No. 21 of 2009 Date: June 22, 2009	Deferment of Application of IFRIC Interpretation 4 "Determining whether an Arrangement contains A Lease" and IFRIC Interpretation 12 "Service Concession Agreements" on fulfillment of specified conditions.	611
SRO 119(I)/2009 Date: February 06, 2009	Sixth Schedule to the Companies Ordinance substituted providing different fees for Registration, filing of Forms, Inspection, Certified True Copy, availability of name, etc. etc. in case of online submission of documents and for physical submission of documents	612
SRO 149(I)/2009 Date: February 11, 2009	Directive that IFRS-4 issued by IAS shall be followed in regard to accounts and preparation of balance sheet and profit and loss account for the period commencing from January 01, 2009 of companies engaged in insurance and re-insurance business.	613
SRO 150(I)/2009 Date: February 13, 2009	Directives for treatment of impairment, if any, resulting from valuation of listed equity securities held as "Available for Sale" in terms of IAS-39 - "Financial Instrument - Recognition and Measurement" to market price, as quoted on the stock exchange as on December 31, 2008.	614
SRO 224(I)/2009 Date: March 05, 2009	Draft amendments in Insurance Rules, 2002 notified.	615
SRO 388(I)/2009 Date: May 12, 2009	Further amendments in Second Schedule to the Modaraba Companies & Modaraba Rules, 1981 in regard to scale of fees for registration, etc.	616
SRO 444(I)/2009 Date: June 08, 2009	Amendments made in Sixth Schedule regarding Application Processing Fee to be charged from companies in respect of application for (a) issue of shares, otherwise than right under S.86(1) proviso or issue of preference shares (b) issue of shares at discount under section 84 and (c) for relaxation from requirement of the Companies (Issue of Capital) Rules, 1996 under Rule 10	617
SRO 446(I)/2009 Date: June 08, 2009	Delegation of powers and functions of the Commission under section 263 of the Companies Ordinance, 1984 to the Commissioner (Securities Market) to hear the matters of Depilex-Smileagain Foundation.	618
SRO 447(I)/2009 Date: June 08, 2009	Alterations made in the First Schedule to the Companies Ordinance, 1984 in regard to Regulations for management of company limited by shares and by guarantee.	619

SRO 455(I)/2009  
Date: June 08, 2009

*Draft amendments in Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008 notified.*

620

SRO 590(I)/2009  
Date: June 23, 2009

*Final amendments in Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008 notified.*

621

## SYNOPSIS OF IMPORTANT CASE LAWS

### DIRECT TAXES

- Note:
- (1) Members are advised to read complete judgment for better understanding of 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 PTD 1016  
DTPSC0295  
Supreme Court of  
Pakistan

**SECTIONS 120, 120-A, 120A (I), 122(1)(5) INCOME TAX ORDINANCE, 2001 (INVESTMENT TAX SCHEME)**  
**FAZAL DIN AND SONS VS. FEDERAL BOARD OF REVENUE**

#### FACTS OF THE CASE

Assessment proceedings for un-explained/un-taxed income were initiated by the tax department for Tax Years 2003 to 2007. During the pendency of proceedings the Federal Board of Revenue (FBR) introduced a scheme "Investment Tax Scheme" vide circular 03 of 2008, for declaring the unexplained/un-taxed income. The Assessee instantly opted under this scheme to declare his un-explained/un-taxed income. Afterwards certain amendments were brought into the original scheme vide circulars 07 and 08 of 2008 following which the scheme would not allow to declare those un-explained/un-taxed income against which proceedings have already been already initiated. Tax department accordingly rejected the declaration of the assessee. Assessee, feeling aggrieved, filed writ petition before High Court on the point that the said amendments are prospective in nature and would not affect the declaration already filed. The case was decided in favour of assessee on the ground that the amendments, vide circulars, in the original scheme cannot be given retrospective effect. FBR challenged the verdict of the High Court on the basis that the Learned Judge of High Court has neither mentioned the proper facts of the case nor has passed a speaking order with regard to case of petitioner and also has not appreciated the provision of section 120A of the Ordinance, inserted through Finance Act, 2008.

#### DECISION

Supreme Court upheld the decision of the High Court and further held that amendment brought through the referred circulars are of substantive nature thereby restricting the scope of the original scheme and the state of law stood changed from the said date effecting the right and liabilities of those who have acted upon the scheme in good faith under its original scope. Therefore, circular No. 07 and 08 of 2008 are prospective in nature and cannot be applied retrospectively.

2009 PTD 809  
99 Tax 382  
High Court of Pakistan

**SECTIONS 122-B, 153(4)(6-A), 207, CLAUSE (46-A), PART -IV OF SECOND SCHEDULE OF INCOME TAX ORDINANCE, 2001**

**PIRANI ENGINEERING V/S. FEDERAL BOARD OF REVENUE**

**FACTS OF THE CASE**

The assessee, applied for normal taxation under clause 46-A of Part IV of 2<sup>nd</sup> schedule to the Ordinance being a manufacturer of auto parts, against the provisions of Section 153(6) of the Ordinance. The Commissioner of Income Tax refused to issue exemption certificate to the assessee on the grounds that the assessee does not fall within the ambit of clause 46-A of the Ordinance. Assessee filed appeal before Director General (DG). DG also refused to allow exemption and stated that exemption is available to those manufacturers/ foundries who are engaged in re-rolling of steels, T-guarders, steel billets, steel sheets etc and not to the manufacturers who uses steel and iron as raw material for further production. Being aggrieved, assessee raised a plea before High Court for determining power and jurisdiction of DG for interpreting the provisions of law and requested to direct the appellate authorities to issue exemption certificate.

**DECISION**

High Court decided against the assessee and held that this case supports the interpretation of clause 46-A of the Ordinance by the appellate authorities, and the assessee's case cannot be excluded from the purview of section 153(6) and assessee will remain within the ambit of presumptive tax regime (PTR) on not being engaged in re-rolling of steels, T-guarders, steel billets, sheets etc."

2009 PTD 662  
DTPHC 2034  
High Court of Pakistan

**SECTIONS 113(4), 133, 221 OF INCOME TAX ORDINANCE, 2001 SECTION 156 OF INCOME TAX ORDINANCE, 1979**

**PAKISTAN PETROLEUM LIMITED VS. COMMISSIONER INCOME TAX APPEALS**

**FACTS OF THE CASE**

The assessee despite being excluded from the purview of the Workers Welfare Funds Ordinance, 1971 voluntarily paid the Workers Welfare Fund (WWF) on its income as per its income tax return. The assessing officer during finalizing the assessment order charged the WWF as per the assessed income. The assessee moved a rectification application wherein the exemption from the levy of WWF was claimed as the majority of the shares (i.e. 93% shares) of the company are held by Government or by the corporation whose majority shares are held by Government. It also submitted that due to inadvertence it had made the payment of WWF which is actually exempt according to the provisions of WWF Ordinance. The Assessing Officer, CIT (A) and Income Tax Appellate Tribunal dismissed the applications on grounds that the assessee company is not being owned by a corporation, in which majority of the shares were held by Government and was not entitled for exemption.

**DECISION**

The verdict of the ITAT is challenged in High Court wherein assessee contended that the ITAT misread the terms of the WWF ordinance and was erred in adjudicating the case against assessee. After considering the view of both sides, Learned High Court decided the case in favour of the assessee and held that "where government owned majority shares of a company then such company is entitled for exemption from the levy of WWF" and further held that "in interpretation of statute, words should be read in their plain meanings and no word should be added or deleted to arrive at an interpretation of statute".

2009 PTD 841  
99 Tax 239  
High Court of Pakistan

**SECTIONS 120, 120(1), 122, 122(5A), 122(9), 177 OF THE INCOME TAX ORDINANCE, 2001**

**NOBEL (PRIVATE) LIMITED VS. FEDERAL BOARD OF REVENUE**

**FACTS OF THE CASE**

The assessee had filed the income tax return for the tax year 2005. Later, Assessing officer had served a notice on the assessee to amend the assessment order and finalized the assessment order thereafter. Assessee had filed the appeal before the commissioner against the order of the assessing officer. During the proceeding of the case, a notice for audit u/s 177 has been served on the assessee on the same grounds that were caused the amendment of original assessment order. Assessee again filed the appeal for determining the jurisdiction of CIT for selecting the case for audit on the same ground similar to the grounds for amendment of assessment order and also determined the extent of the scope of section 120(1A) of the Ordinance.

**DECISION**

High Court held that Commissioner had powers to select the cases which fall under the provisions of subsection 1 of section 120 of the Ordinance for audit of their tax affairs and also that subsection 1-A of the Ordinance has retrospective effect and further held that impugned notice has been issued under exercise of power of proper jurisdiction and authority by the Commissioner.

2009 PTD 1054  
DTPHC 2042  
High Court of Pakistan

**SECTIONS 131 OF INCOME TAX ORDINANCE, 2001**

**EJAZ SPINNING MILLS VS. TAXATION OFFICER/ ADDITIONAL COMMISSIONER OF INCOME TAX**

**FACTS OF THE CASE**

The Income Tax Appellate Tribunal (ITAT) had not entertained the appeal of assessee on the ground that the order of CIT (A) was an interim order. The assessee filed an appeal before High Court contending that there is no such classification under the law for the order of CIT (A) as to whether it is an interim order or a final order.

**DECISION**

High Court held that there is no classification as to the orders decided by CIT(A) and once an order is decided by the CIT(A) upto his authority/jurisdiction/level, becomes final and the said order will not remain an interim order. Further held that this court have no doubt about the availability of right of appeal to assessee against the order of CIT(A) for any order made by the said authority.

2009 PTD 891  
DTPHC 2040  
High Court of Pakistan

**SECTIONS 50(4A), 52 OF INCOME TAX ORDINANCE, 1979**

**COMMISSIONER (LEGAL) VS. NOVARTIS PHARMA (ASSESSEE/RESPONDENT)**

**FACTS OF THE CASE**

The assessee (a manufacturer of pharmaceutical products) made an agreement with a distribution company to perform all functions relating to the distribution of pharmaceutical products and all the expenses incurred by the distribution company will be reimbursed accordingly along with the fee calculated at agreed rate and tax is charged according to the applicable rates. The assessing officer treated the assessee in default for not making the proper deduction of tax while making the payment to distribution company and treated the payment as "commission" and thereon served the order on assessee u/s 52. CIT(A) held in deciding the appeal that the assessing officer is right in treating the services charges (fee) as commission but excluded the part of reimbursement from the purview of commission. The department challenged the verdict of CIT(A) before ITAT. ITAT concurred the decision of the CIT(A).

2009 PTD 862  
99 Tax 363  
High Court of Pakistan

**DECISION**

Assessing officer challenged the decision of ITAT before the High Court and quoted various definitions with reference to "commission" to hold the reimbursement as commission. High Court had adjudicated the case in favour of the assessee and held that the "commission" and "reimbursement" have two distinct meanings and assessing officer is erred in treating both words within same meanings.

**SECTION 2(43), 9, 10, 69(4)(A) OF INCOME TAX ORDINANCE, 1979  
COMMISSIONER INCOME TAX VS. FAZAL-UR-REHMAN****FACTS OF THE CASE**

In this case, the scope of the word "Tax" was determined under the light of various section of the repealed Ordinance that whether or not "super tax" and "penalty" falls within the ambit of word "Tax"? The issue involved was to compute distributable income of registered firms for allocation among the partners. Income Tax Appellate Tribunal (ITAT) forwarded two different interpretations of the word "Tax". According to the Accountant Members of ITAT bench, the distributable income will be calculated by deducting "super tax" from the income of the firm but on the other hand, judicial members considered that distributable is computed by deducting both "super tax" and "penalties". Chairman of the ITAT bench concurred the consideration of the Judicial members. Tax Department based on the view of accountant members, challenged the decision of the ITAT before High Court.

**DECISION**

High Court decided against tax department and held that when there is two different interpretations are possible then the Court will adopt the interpretation which is more beneficial to and in favour of taxpayer, High Court concurred the interpretation arrived at by the Learned Judicial Members seconded by the learned Chairman of the Tribunal which is the correct interpretation of section 69(4) of the repealed Ordinance.

2009 PTD 712  
99 Tax 371  
High Court of Pakistan

**SECTION 62, 156 OF INCOME TAX ORDINANCE, 1979****SECTION 122(1A), 239(4) OF INCOME TAX ORDINANCE, 2001  
ZEAL PAK INDUSTRIES VS. REGIONAL COMMISSIONER INCOME TAX****FACTS OF THE CASE**

In this case, the mistakes were found in the assessment order in the Assessment year 2000-2001 wherein inadmissible expenses were allowed by mistake. The Commissioner issued show cause notice under section 221(1A) of the ordinance dated 18-08-2006 to the assessee for rectification of assessment order (finalized as on 29-06-2002). Assessee had not made any compliance of the notice and filed an appeal stating that applicability of subsection 1-A section 221 of the Ordinance introduced vide Finance Act, 2003 is prospective in nature and assessment finalized under section 62 of the repealed ordinance cannot be rectified after the expiry of four years according to the section 156 of the repealed Ordinance. On the other hand, the department contention was that the section 221 of the Ordinance is procedural in nature, prescribing the procedures to rectify mistakes floating on surface of records and empower commissioner to rectify orders not having become time-barred before 30-06-2003 under section 156 of repealed ordinance and further said the section 221 of the Ordinance is retrospective in nature and apply to orders passed before 30-06-2003.

2009 PTD 738  
99 Tax 248  
Income Tax Appellate  
Tribunal of Pakistan

**DECISION**

High Court after considering the views of both parties, dismissed the petition of the assessee and held that the notice issued by the Commissioner is under the proper jurisdiction and petition filed by the assessee is premature as having been filed by the assessee without providing sufficient reply to show cause notice of the Commissioner. High Court directed the department to allow the assessee reasonable time to file reply to the show cause notice. High Court further held that the procedural amendments are applicable to all pending proceedings and to all cases not having become past and closed transactions. On the question about the meaning of subsection 1A of section 221 of the Ordinance, High Court held that subsection 1A which is again introduced vide Finance Act, 2003 has the same meaning as it had before it was rescinded.

**SECTION 4(14), 114(4), 115(4), 170 OF INCOME TAX ORDINANCE, 2001****FACTS OF THE CASE**

In this case, the assessee (deals in processing and sale/export of cloth) raised two pleas before ITAT against the taxation officer which were upheld by the CIT (A). The first plea was that whether the refunding authority, instead of issuing/processing refund application, can determine the legality of the income tax return filed by the assessee, which is beyond his jurisdiction and in second plea that whether the assessing officer can charge workers welfare fund (WWF) charges on the income of Presumptive/Final Tax Regime (PTR/FTR).

**DECISION**

ITAT decided the appeal in favour of assessee and held that the refunding authority has no jurisdiction to determine the legality of a return of income as the work has been distributed to two separate departments. Both have been assigned distinct work with clear and unambiguous jurisdiction and further held in case of charge of WWF that in the year under consideration no WWF charge would be levied on the FTR Income.

2009 PTD 1117  
Income Tax Appellate  
Tribunal of Pakistan

**SECTION 115(4), 122(4) AND CLAUSE 41 OF PART IV OF SECOND SCHEDULE OF INCOME TAX ORDINANCE, 2001****FACTS OF THE CASE**

In this case, Assessee (being manufacturer of Printing and Packaging material) filed his income tax return under Normal Tax Regime (NTR) for the tax year under consideration (i.e. tax year 2005). The income of the assessee was assessed under Presumptive Tax Regime (PTR) by treating the assessee under legal obligation to file return under PTR while ignoring the amendment made in this regard in the Ordinance vide circular 01 of 2005. CIT (A) confirmed the actions of the assessing authority. Assessee filed appeal before the ITAT and contended that we have rightly filed the return under NTR in the light of Finance Act, 2005 and subsequent amendments thereon as there is no option left by the department for the filing of return of income either under NTR or PTR. Assessee also filed the condonation of delay of filing the appeal.

**DECISION**

ITAT had accepted the condonation of delay and held that assessee/ appellant had rightly filed the return of income under NTR because the law did not provide any option to the manufacturer for being assessed under PTR and further held that we found no justification for invoking order of lower authorities passed under section 122 of the Ordinance. Order of the first appellate authority was vacated and order passed by the taxation officer was cancelled by ITAT.

2009 PTD 1004  
Income Tax Appellate  
Tribunal of Pakistan

**SECTION 113, 221 OF INCOME TAX ORDINANCE, 2001  
FACTS OF THE CASE**

*In this case, the assessee (foreign exchange dealer/ money changer) sustained loss during the tax year under consideration, filed the return of income by charging turnover tax on the gross profit. Taxation officer during audit found that the assessee computed the minimum tax on gross profit instead of gross receipts from the sale of foreign currency and accordingly served the order under section 221 of the Ordinance upon the assessee without providing assessee any opportunity of being heard and charged minimum tax on gross receipts/turnover. In compliance, assessee thereon omitted his trading account and showed the gross profit as gross turnover and stated that in the light of the section 113(5)(b) of the Ordinance, the minimum tax is to be charged on the gross fee for rendering of services including commission and further stated that we are only enjoying the exchange income (variance of buying and selling). On appeal, CIT(A) annulled the order of taxation officer and held that the consideration put up by the assessee carries weight and in the light of decisions other Higher Authorities in the same regard, it is held by the CIT(A) that the turnover tax should have been charged on exchange income of the assessee and held that the action of the taxation officer in charging the turnover tax under section 113 of the Ordinance on gross receipts instead of exchange income is unwarranted, unjustified and discriminatory in nature. Taxation officer filed appeal in the ITAT against the impugned order of CIT (A). Assessee contended that the Federal Board of Revenue (FBR) is treating business of exchange companies under purview of services and not as trading business and the services provided by the foreign exchange dealer is represented commission, which, for the purposes of chargeability of minimum tax fell under section 113 (3)(b) of the ordinance.*

**DECISION**

*After considering the views of the both parties, ITAT stated that the taxation officer has violated the provision of the law by passing order without serving notice upon assessee and CIT(A) has rightly annulled the order of the taxation officer.*

2009 PTD 1026  
99 TAX 443  
Income Tax Appellate  
Tribunal of Pakistan

**SECTION 115(4), 122(4) AND CLAUSE 41 OF PART-IV OF SECOND SCHEDULE OF  
INCOME TAX ORDINANCE, 2001**

**FACTS OF THE CASE**

*In this case, the assessee running as branch office engages in operations of Franchises Bus services and derives income from services by passenger buses plying on hire. During the tax year 2003, the assessee imported 52 busses from China and paid the due tax on import stage at 6%. During the tax year, assessee did not operate its business and filed the nil return and claimed refund of tax deduction on imports. Taxation officer rejected the refund application on grounds that the tax deducted on imports fell under Presumptive Tax Regime (PTR) and is not adjustable and passed the order thereon. On appeal, CIT(A) upheld the order of Taxation officer and stated that the documents and evidences can not be entertained at this stage of appeal as these were not produced in response to the taxation officer's notice. Assessee filed the appeal before the ITAT and stated various facts with sufficient references in support of his action as follows:*

- *In the light of circular 08 of 2004 that tax collected at import stage is out of the ambit of PTR if the import items do not use for commercial sale.*

- We are providing services to the general public so in the light of circular 01 of 2005, withholding taxes on all type of services are adjustable and not a final discharge of tax liability.
- In the light of SRO 593(I)/91, section 148 do not apply to foreign investor of imported buses under Transport Franchise Agreement.
- We are eligible for depreciation on imported business passenger buses and required by law to file return under section 114.

In the view of above explanations, assessee further stated that all documents are provided/submitted for the purposes of proceedings of refund claimed and below authorities are against law and contrary to the evidences provided and taxation officer disposing the refund application had no jurisdiction to reject the refund claimed under the assessment (according to citation (2007) 96 Tax (Trib.)). Appellate authority contended against the argument of assessee.

#### DECISION

ITAT, after considering the views of both parties, vacated the impugned order of CIT (A) and directed for issuance of fresh consideration under section 170 of the Ordinance. Taxation officer is directed to allow refund in accordance with law keeping in view the submissions made on behalf of assessee and held that the refund issuing authority had no jurisdiction to go into the legality of the assessment.

99 Tax 261  
Income Tax Appellate  
Tribunal of Pakistan

#### SECTION 122(1), 122(4A) OF INCOME TAX ORDINANCE, 2001

##### FACTS OF THE CASE

In this case, taxation officer/DCIT amended the assessment order of the assessee on 24-06-2004 using powers of section 122(1) and 122(4A) of the Ordinance on discovering the information that the sales are based on contravention report, purchases shown are bogus and short/non deduction of tax on certain payments. Assessee contended that the aforesaid order had been issued after the lapse of time limited under the Ordinance, which is 18-05-2004. CIT (A) rescinded the impugned order issued under section 122(1) of the Ordinance dated 28-06-2004 being ab-initio, illegal is not sustainable in the eye of law and further held that the provision of section 122(4A) of the Ordinance are not attracted in the appellant's case because the original order is finalized under section 62 of the repealed ordinance. The order under section 62 of repealed Ordinance for the year under appeal being issued on 19-05-1999 was barred by the time limitation on 18-05-2004 and the taxation officer erred in law and on facts of the case in invoking the provisions of section 122(4A) of the Ordinance. Taxation officer challenged the verdict of CIT (A) before ITAT.

#### DECISION

ITAT, after considering the views of both parties, vacated the impugned order of the taxation officer and upheld the decision of the CIT(A).

## INDIRECT TAXES

#### CITATION

2009 PTD 63  
S. C.

#### ISSUES INVOLVED

32,180,168  
Customs Act, 1969

In this case, the goods imported by the importer were seized by the custom authorities. Petitioner filed appeal before Hon'ble Supreme Court against the judgement of High Court which was dismissed on the grounds that goods were not only unregistered but banned in Pakistan since 2006 for causing adverse effect to human beings.

**2009 PTD 131**  
**H. C. Sindh**

*Schedule-VI*  
*Item 12 &13*  
*SRO 357(1)/84*

*In this case the adjudicating authority decided that Barium Sulphate is not a registered drug and is not used for alleviation of the diseases and wounds therefore cannot be treated as dug.*

*It was held that Barium Sulphate is included in the list of prescription chemical and if it is clear from the prusal of bill of entry that it had been imported as chemical under SRO 357(1)/84, then for all practical purpose falls within the definition of drugs under the Drugs Act, 1976.*

**2009 PTD 371**  
**Sales Tax Tribunal**

*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 abjection were vague department once again asked for verification of documents, in question for removal of ambiguity.*

*The Tribunal set aside the order and ordered to release the refund as claimed by the appellant.*

**2009 PTD 519**  
**H. C. Lahore**

*7 of Central Excise Act*  
*SRO 617(1)/2000*  
*SRO 503(1)/2004*  
*SRO 648(1)/2005*  
*SRO 550(1)/2006*

*In this case excise duty levied on telecommunication services was challenged. SRO 617 was superseded by SRO 503, which was again superseded by SRO 648, confirming such charges on telephone services.*

*It was held by the Court that Federal Government in exercise of powers under S. 7 of Federal Excise Act, 2005 through SRO 550(1)/2006 dated June 05, 2006 under its Heading 98.02 and in supersession of SRO 648(1)/2005 levied such duty on telecommunication services. Therefore Excise duty levied through SRO 550(1)/2006 would apply to all users of telecommunication services including domestic consumer.*

**2009 PTD 642**  
**H. C. Sindh**

*45-A,47-A & 72 of*  
*Sales Tax Act, 1990*

*In this case notice was issued by Federal Board of Revenue to reexamine its order passed under S. 47-A of the Sales Tax Act, on recommendation of Alternate Dispute Resolution Committee.*

*It was held that Board had no power to review its own order either under section 45-A, or any other provision of sales tax. Board having become functus officio in respect of its order had no jurisdiction to issue impugned notice for its reexamination. The notice was quashed.*

**2009 PTD 943**  
**H. C. Lahore**

*S. 25(1)&25 (A) of*  
*Customs Act, 1969*

*In this case petition was filed under the Constitution of Pakistan (1973), for the reason that value of imported goods was enhanced against its declared value on ground of receipt of new valuation advice.*

**2009 PTD 992  
Tribunal**

S. 156(1), Clauses (14)  
(14-A), (16), (17), (77),  
(84), Ss.32, 32-A, 35,  
39, 131, 131-A & 178  
of Customs Act, 1969

*It was held that such advice did not show method of its preparation, but was repetition of method being applied earlier and the advice also did not mention unit price or its retail price in market. The advice should have been based upon proper discussion and reference to value of disputed items. The High Court set aside the impugned order.*

*In this case petition was filed under Constitution of Pakistan (1973), Art.199 for Quashing of proceedings. Interim challan in the case was submitted after three years of lodging FIRs. It was contended that there were no provisions in the law for submission of interim challan after three years, it was to be deemed as final challan, which carried no material for connecting the petitioners with the commission of said crimes.*

*It was held that inordinate delay of over three years in the investigation of crimes and submission of interim challan without collecting any evidence against the petitioners was indicative of an abuse of the process of law which was to be prevented in order to secure the ends of justice. There was no possibility/likelihood of conviction of the petitioners existed in the two crimes in case the proceedings emanating from the crimes which related to an attempt to defraud the national exchequer by fraudulently claiming the inadmissible duty draw back, were allowed to continue. The proceedings were ordered to be quashed.*