



# 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

1. Seminar on Filing of Income Tax Return
2. Iftar Dinner

Date and Speakers will be  
announce in due course



**FROM THE DESK OF THE PRESIDENT**

***"A nation can't be deprive from any thing, if they hold one thing massively, which is HOPE"***  
***(William Shakespeare)***

The phrase elaborates the fact to live up the hope pertinently, which is an essential tool for the spur growth of the nations. If we see the financial year 2008 from a broader aspect, then we realized that the said year was one of disasters, not only for our country but also for the entire world because of the severe financial tsunami, which grabs the whole world in its fatal claws. The brutality of the current liquidity crunch left an adverse effect on every economy of the world and pushed hundreds of thousands of people below the poverty line. It is pertinent to declared here regarding the current financial turmoil because an enormous number of people are still unaware with the situation of a deteriorating economy. Its become integral for the institutions to come up and educate the people in this regards and I am so happy to see that a number of institutions come up with a positive phase of mind to explore and educate the people of Pakistan, to make them able to face any kind of challenges and threats.

Dearth of knowledge regarding the applicable laws within the country is one of the terrible trounces for a citizen. We realize this scarcity with due diligence and took initiative to endow the people, especially the bar members in a reasonable fashion.

Being the largest Income Tax Bar of the country, it is our foremost duty to equip the bar members as well as the readers with updated income tax, sales tax and corporate knowledge, which ultimately enhance the quality of the bar members.

To revamp a thing is really an uphill task, and due to the preceding problems, it is now mandatory to refurbish the base of the bar to abridge the emanating threats, which we have envisaged before. It is the bar's tradition to keep updated their members by equipping them with the latest knowledge regarding the profession.

In order to keep the members and the general public abreast with latest happenings in the profession and pronouncements by the Federal Board of Revenue and Federal Government relating to the laws of Revenue, we proudly present yet an other publication of the New & Views for the calendar year 2008, which not only contains the Notification/SRO, Circulars and General orders but also contains the important cases from the learned Income tax Appellate Tribunal, High Court and Supreme Court of Pakistan, so, that these cases might be utilized as a reference in future in same disputed cases.

It is a state of stigma for us that we faced a number of issues before, which condensed our productivity and efficiency, but now we come up with fragility which definitely helps us to overwhelm on such deficiencies completely INSHALLAH which, we confronted before. I am assuring you of our commitment for continuity of these informative publications, will continue.

President

**FROM THE DESK OF THE CONVENER**

I am pleased from the confidence of the bar members which they imposed on me. 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 elaborate the dilemma we face during the year 2008.

I am obliged to my Learned Committee members, as without their contribution and confidence, I might not be able to perform my duty in a reasonable manner. I would like to give all credit and appreciation to them as they have the finest in knowledge, experience and expertise.

We received a 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 who helped me with these publications.

Regards

Mohammad Rehan Siddiqui



## IMPORTANT CIRCULARS & NOTIFICATIONS/ SROs

### DIRECT TAXES

**Note:** Members are advised to read complete text of Circulars and SROs/ Notifications for better understanding of the respective issues

CIRCULAR/ SRO/ NOTIFICATION REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
C.No.7(42)S.Asstt/06 01 January 2008	Corporate income tax returns filing date extended from 31 December 2007 to 14 January 2008. Penalty will not be imposed if the above returns are filed by the extended date	471
Circular No.01 of 2008 18 January 2008	Additional tax of 2% charged to commercial importers under the Sales Tax Act, 1990, being in lieu of value addition at local supply stage, should not be included for determining the value of imports for tax withholding under section 148 of the Income Tax Ordinance, 2001 ("Ordinance")	472
Circular No.02 of 2008 28 February 2008	In view of the provisions of section 100A read with the Seventh Schedule introduced through the Finance Act, 2007, providing for computation of profits and gains and income tax payable thereon for Banking Companies, it has been clarified that effective from 04 January 2008 withholding provisions of the Ordinance shall not apply in case of Banking Companies as a recipient of the amount on which tax is deductible. Moreover, withholding agents are not required to ask for a specific exemption certificate for non deduction of tax while making payments to Banking Companies	473
C.No.1(10)S.Astt/2005Vol.I 14 April 2008	Due date for e-filing of withholding tax statement under section 165 of the Ordinance for the month of March 2008 changed from 10 to 15 April 2008	474
Circular No.3 of 2008 01 July 2008	Investment Tax Scheme, 2008 announced for declaration of moveable and immoveable assets and payment of "investment tax" @2% of the fair market value of the assets	475
Circular No.04 of 2008 01 July 2008	Tax Arrear Settlement Incentive Scheme (TASIS) 2008 introduced for payment of arrears of income tax and withholding tax not deposited by the withholding agents	476
Circular No.5 of 2008 05 July 2008	Amendments made in the various provisions of the Ordinance vide the Finance Act, 2008 explained	477
Circular No.6 of 2008 10 July 2008	Explanation, clarification and examples for the calculation of income tax payable (including marginal relief) by salaried individuals	478
Circular No.7 of 2008 19 July 2008	Clarification regarding Investment Tax Scheme, 2008	479
Circular No.8 of 2008 08 August 2008	Amendments made in the Investment Tax Scheme, 2008 announced through Circular No.3 of 2008	480
Circular No.9 of 2008 15 August 2008	Clarification regarding deduction of tax from cash withdrawals under section 231A of the Ordinance	481
Circular No.10 of 2008 August 27, 2008	Clarification regarding the term "Manufacturer-Cum-Exporter" for the purpose of Clause (66), Part IV of the Second Schedule to the Ordinance as a person whose exports for the preceding tax year constituted 80% or more of the goods manufactured by him	482

Circular No.11 of 2008 04 September 2008	Clarification regarding procedure in respect of deduction and payment of tax under section 153(5)(bb) of the Ordinance on the purchase of cotton lint by textile industry from cotton ginners	483
Circular No.12 of 2008 19 September 2008	The FBR's Circular No.10 of 2008 dated 27 August 2008, introducing the definition of the term "Manufacture-cum-Exporter" held in abeyance till further orders	484
Circular No.13 of 2008 23 October 2008	Clarification regarding payment of Worker Welfare Fund (WWF) for taxpayers whose income fall under the Final Tax Regime (FTR) from tax year 2009	485
Circular No.14 of 2008 16 December 2008	Due date for filing the return of income for new taxpayers intended to avail Investment Tax Scheme 2008 extended	486
SRO 152(I)/2008 16 February 2008	Income derived by P.S.A. Gwadar (PTE) Limited from Gwadar Port operations exempted from tax for a period of twenty years beginning from the year in which the company is set up or commercial operation is commenced, which ever is the later	487
SRO 171(I)/2008 21 February 2008	Pakistan Water and Development Authority and National Dispatch Company made liable to pay minimum tax under section 113 of the Ordinance	488
SRO 353(I)/2008 03 March 2008	Monthly withholding tax statements under section 165 of the Ordinance is to be filed within ten days instead of fifteen days of the end of each month	489
SRO 405(I)/2008 26 April 2008	Exemption under Clause (132) of Part-IV of the Second Schedule to the Ordinance extended to Independent Power Projects already in operation for the expansion of Projects	490
SRO 566(I) /2008 11 June 2008	Collection of tax on imports under section 148 to be made @ 2% which previously was 5%	491
SRO 690(I)/2008 26 June 2008	Double Tax Treaty (DTT) entered into between the Governments of the Islamic Republic of Pakistan and Lebanese Republic notified	492
SRO 767(I)/2008 21 July 2008	International Finance Corporation (IFC) established under the International Finance Corporation Act, 1956 exempted from tax and the provisions of sections 150, 151, 152, 153 and 233 shall not apply in respect of payments made to IFC	493
SRO 772(I)/2008 22 July 2008	Pakistan Domestic Sukuk Company (PDSC) exempted from tax and the provisions of sections 151, 153 and 155 shall not apply in respect of payments made to PDSC	494
SRO 860(I)/2008 19 August 2008	In clause (56)(b), sub-clause (v) inserted in Part IV of the Second Schedule to the Ordinance stating that mineral oil imported by a manufacturer or formulator of pesticides is exempt from customs-duties	495
SRO 947(I)/2008 05 September 2008	The FBR prescribed persons, procedures and conditions to whom sub-section (1) of section 148 of the Ordinance shall not apply. The FBR has empowered Commissioner of Income-tax (CIT) concerned to issue system based exemption certificate only (through computer) in few cases mentioned in the SRO on case to case basis	496
SRO 1012(I)/2008 23 September 2008	Asian Development Bank (ADB) established under Asian Development Bank Ordinance, 1971 exempted from tax and the provisions of sections 150, 151, 152, 153 and 233 shall not apply in respect of payments made to ADB	497



SRO 1055(I)/2008 10 October 2008	Clause (66) substituted in Part IV of the Second Schedule to the Ordinance stating that the provisions of section 235 shall not be applicable to taxpayers who fall under the zero rated regime of sales tax and registered with sales tax as exporter or manufacturer of carpets; leather and articles thereof including artificial leather footwear; surgical goods; sports goods; and textile and articles thereof	498
SRO 1138(I)/2008 01 November 2008	The Governments of the Islamic Republic of Pakistan and Japan revised the earlier DTT which has been notified	499
SRO 1290(I)/2008 20 December 2008	The Governments of the Islamic Republic of Pakistan and Swiss Confederation revised the earlier DTT which has been notified	500

## INDIRECT TAXES

CIRCULAR /SRO/ NOTIFICATION REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
Circular No.02 of 2008 10 May 2008	The FBR had not allowed further exemption to registered person of Computer Industry to file invoice summary statement after February 2007. However, in order to streamline the filing of previous invoice summary statements, the FBR has prescribed schedule for filing of the same for the tax period from June 2007 to May 2008 without any penalties for registered persons complying with the above. The retailers of computers shall remain exempt from the requirement of submission of invoice summary statements under Sales Tax Circular No.6 of 2006 dated 12 September 2006	501
SRO 524(1)/2008 11 June 2008	Exemption on the amount of sales tax, default surcharge and penalty payable in respect of taxable supplies made prior to 11 June 2008	502
SRO 525(1)/2008 11 June 2008	Amendment in the Sales Tax Special Procedures Rules, 2007	503
SRO 526(1)/2008 11 June 2008	Rescission of the Refund Sales Tax (on export of specified goods) Rules, 2006 and the processing of refund claims of Large Taxpayers Rules, 2007	504
SRO 527(1)/2008 11 June 2008	Recession of SRO 543(I)/2006 dated 05 June 2006	505
SRO 528(1)/2008 11 June 2008	Recession of SRO 559(I)/2006 dated 05 June 2006	506
SRO 529(1)/2008 11 June 2008	Amendment in SRO 647(1)/2007 dated 27 June 2007	507
SRO 530(1)/2008 11 June 2008	Amendment in Sales Tax Rules, 2006	508
SRO 531(1)/2008 11 June 2008	Recession of SRO 544(I)/2006 dated 05 June 2006	509
SRO 532(1)/2008 11 June 2008	Fixation of minimum value of coal	510
SRO 533(1)/2008 11 June 2008	Recession of SRO 645(I)/2006 dated 21 June 2006	511
SRO 534(1)/2008 11 June 2008	Recession of SRO 609(I)/2004 dated 16 July 2004	512
SRO 535(1)/2008 11 June 2008	Exemption to Fertilizers	513

SRO 536(1)/2008 11 June 2008	Exemption to pesticides and its active ingredients	514
SRO 537(1)/2008 11 June 2008	Amendment in SRO 644(1)/2007 dated 27 June 2007	515
SRO 538(1)/2008 11 June 2008	Amendment in SRO 509(1)/2007 dated 05 June 2007	516
SRO 540(1)/2008 11 June 2008	Amendment in SRO 863(1)/2007 dated 24 August 2007	517
SRO 541(1)/2008 11 June 2008	Rescission of SRO 541(1)/2006, dated 5 June 2006	518
SRO 542(1)/2008 11 June 2008	Exemption of sales tax on mobile phones in excess of activation charges	519
SRO 543(1)/2008 11 June 2008	Certain provisions of the Sales Tax Act, 1990 to apply in like matters on FED under the Federal Excise Act, 2005	520
SRO 544(1)/2008 11 June 2008	Amendment in SRO 550(1)/2006 dated 5 June 2006 specifying services on which FED shall be levied in VAT mode	521
SRO 546(1)/2008 11 June 2008	Amendment in Federal Excise Rules, 2005	522
SRO 549(1)/2008 11 June 2008	General and conditional zero rating	523
SRO 550(1)/2008 11 June 2008	Rescission of several zero-rating notifications	524
SRO 551(1)/2008 11 June 2008	General and conditional exemption from Sales tax	525
SRO 552(1)/2008	Rescission of several exemption notifications	526
SRO 511(1)/2008 5 June 2008	Amnesty from Sales tax and Federal excise. Exemption to tax defaulters from whole of default surcharge and penalties in respect of sales tax and Federal Excise Duty	527
SRO 49(1)/2008 15 January 2008	Mandatory electronic filing extended to all sales tax returns and statements	528
SRO 77(1)/2008 23 January 2008	Amendment in Sales Tax Special Procedure (Withholding) Rules, 2007	529
SRO 115(1)/2008 02 February 2008	Exemption from whole of sales tax for a period of forty years granted on the imports and supply of materials and equipments for construction and operation of Gwadar Port	530
SRO 204(1)/2008 04 March 2008	Period extended for refund of excess input tax to Independent Power Producers	531
Sales Tax General Order 54 21 November 2008	The FBR has prescribed the procedures and conditions for extension or delay in any deadline or time limit provided in the Act for making any application or an act	532
Sales Tax General Order 22 26 June 2008	In view of the increase in sales tax rate from 15% to 16% vide the Finance Act, 2008, usage of existing packing material and stock printed with sales tax amount @ 15% allowed for a period of three months starting from 01 July 2008 subject to the some conditions	533



## CORPORATE

CIRCULAR /SRO/ NOTIFICATION REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
Circular No.1 of 2008 07 January 2008	Directive to publish notices, prospectus, etc. at least in one daily English and Urdu Newspapers, having wide circulation in the province in which in case of a listed company, the stock exchange on which company is listed is situated and in case of other company, where the registered office of the company is situated	534
Circular No.2 of 2008 22 January 2008	Amendments in guidelines for issuance of Term Finance Certificates to the general public	535
Circular No.3 of 2008 01 April 2008	Specification regarding certification requirement of Para 6 of Circular No.6/2006 regarding "Maximum Management Expense Limits for Life Insurers" under sections 22(9) and 23(9) of the Insurance Ordinance, 2000	536
Circular No.4 of 2008 07 April 2008	Amendments in the guidelines approved by the Religious Board for issuance of Certificates of Musharika by Modarabas	537
Circular No.5 of 2008 14 April 2008	Directives for sharing of expenses of Insurance Ombudsman's Secretariat by Insurance/ Takaful Companies in pursuance of Section 125 of the Insurance Ordinance, 2000	538
Circular No.6 of 2008 08 May 2008	Specification of Model Financing Agreements approved for Modarabas	539
Circular No.7 of 2008 08 May 2008	Insurance/ Takaful companies engaged in transacting health insurance business, requested to furnish information regarding quantum of premiums, claim expenses and business acquisition cost in respect of health insurance business	540
Circular No.8 of 2008 12 May 2008	Companies Easy Exit Scheme (CEES) 2007 extended upto 30 June 2008 for dormant unlisted public and private companies having no assets or liabilities and not carrying on any business	541
Circular No.9 of 2008 15 May 2008	Permission granted by the Religious Board for insertion of the words "An Islamic Financial Institution" after the name of a Modaraba in brackets to represent functions and businesses of a Modaraba under the shadow of Islamic Financial Services	542
Circular No.10 of 2008 02 June 2008	Amendments made in existing Prudential Regulations for Modarabas issued vide Circular No.4 of 2004 dated 28 January 2004	543
Circular No.11 of 2008 13 June 2008	Concession granted to Listed, Unlisted and/or Private IPP Companies which have executed Implementation Agreements with the Government to capitalize exchange loss on foreign currency loans contracted by IPPs and outstanding on the date of revision of the 4th and 5th Schedule till the termination date of Implementation Agreements in question	544
Circular No.12 of 2008 17 June 2008	Standardized criteria specified for submission of Documents>Returns to SECP	545
Circular No.13 of 2008 19 June 2008	Pakistani Companies are required to obtain mandatory prior permission from Ministry of Interior for sponsoring visits of representatives of foreign companies to prohibited areas i.e., borders areas, line of control, sensitive installations and tribal areas	546
Circular No.15 of 2008 07 July 2008	Directives to comply Minimum Statutory Deposit Levels to all Insurance/Takaful Companies	547

Circular No.16 of 2008 14 July 2008	All Asset Management Companies directed to submit a daily statement of the assets and liabilities of all Collective Investment Schemes under their management to SECP with effect from 14 July 2008.	548
Circular No.17 of 2008 26 August 2008	In order to protect interest of the unit holders of a Collective Investment Scheme, all Asset Management Companies directed to comply with the provisions of Regulation 67 of NBFC & Notified Entity Regulations, 2007 in letter and spirit and settle all second ticket purchase transactions on the CFS market immediately	549
Circular No.19 of 2008 11 September 2008	Information sought for Reinsurance Premium ceded outside Pakistan from Insurance and Takaful Companies	550
Circular No.20 of 2008 15 September 2008	Directives for submission of Forms 16 and 17 manually if Form 10 submitted before 22 July 2008 which is not currently available in eservices However, Forms 16 and 17 submitted in lieu of Form 10 after 22 July 2008 can be submitted online through eservices	551
Circular No.21 of 2008 26 September 2008	Financial Institutions' obligations to furnish information under Anti-Money Laundering Ordinance, 2007 promulgated on 07 September 2007	552
Circular No.22 of 2008 07 October 2008	Directives to Insurers/ Takaful Companies to submit prescribed features/details of their respective reinsurance/ retakaful treaty arrangements, as per the requirement of law	553
Circular No.23 of 2008 07 October 2008	Asset Management Companies managing open-end schemes with direct exposure to equity securities directed to comply with instructions given to ensure protection to unit-holders in view of prevailing situation due to introduction of "floor" on the equity prices by the Stock Exchanges	554
Circular No.24 of 2008 10 October 2008	Procedure for submission/ e-filing of Returns on behalf of companies by Intermediaries (Corporate Consultants)	555
Circular No.25 of 2008 20 October 2008	Sharing of costs of maintaining Insurance Ombudsman's Secretariat by Insurance/ Takaful Companies	556
Circular No.26 of 2008 (Further Clarification By Letter Dated 06-11-2008) 05 November 2008	Directive to all Asset Management Companies to value all Debt Securities including TFCs, Sukuk etc. held by Collective Investment Schemes (Mutual Funds) applying specified rates for calculating Net Asset Value	557
Circular No.27 of 2008 05 December 2008	Reporting from Issuers about privately placed financial instruments in the nature of Redeemable Capital, like TFC, PTC, Sukuk Certificates, commercial papers, etc. of special information	558
SRO 278(I)/2008 11 March 2008	Specification of Powers of Commissioner (Company Law Division) and Executive Director (Enforcement Department), Company Law Division to adjudge all offences, contraventions and defaults under any provision with regard to Companies falling in the Insurance Sector to impose fine (other than fine in addition to, or in lieu of, imprisonment)	559
SRO 411(I)/2008 28 April 2008	IAS 29 and IFRS 7 & 8 issued by IASB to be followed in regard to the accounts and preparation of balance sheet and profit and loss account of listed companies.	560
	Provided that the requirements of IFRS-7 shall not, till further orders, apply to Banks and such NBFCs as are engaged in investment finance services, discounting services and housing finance services.	561
SRO 509 (I)/2008 04 June 2008	20 June 2008 appointed to be the "effective date" on which the filing of electronic documents with the Commissioner or the Registrar. However, simultaneously, submission of documents in paper form shall also be permissible till further date	562



SRO 682 (I)/2008 25 June 2008	Amendments made in the Securities and Commission (Insurance) Rules, 2000	563
SRO 683 (I)/2008 27 June 2008	Amendments made in Disclosure Requirements for Collective Investment Schemes in Schedule IV to the Non-Banking Finance Companies and Notified Entities Regulations, 2007 notified through SRO 1132(I)/2007 dated 21 November 2007	564
SRO 684 (I)/2008 27 June 2008	Associated companies of NBFCs licensed to undertake asset management services for making investment (other than seed capital) in the open end schemes managed by such NBFCs shall be exempt from the requirement of obtaining the authority of a special resolution for making investment in associated companies/undertakings under section 208(1)	565
SRO 706 (I)/2008 30 June 2008	Further exemption from application of Clause (6) of Part I of the Fourth Schedule to the Companies Ordinance, 1984 till 31 December 2008 to listed companies and their subsidiaries	566
SRO 839 (I)/2008 11 August 2008	Delegation of powers and functions of SECP to its Executive Directors (Registration Department) and Executive Directors (Enforcement Departments) under various specified sections	567
SRO 906 (I)/2008 29 August 2008	Listed companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008 issued	568
SRO 907 (I)/2008 29 August 2008	Appellate Benches reconstituted	569
SRO 1002 (I)/2008 22 September 2008	Delegation of powers and functions of the Executive Director (Enforcement Department) under various specified sections of listed companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002	570
SRO (I)/2008 26 September 2008	Companies Cost Accounting Records (General Order), 2008 issued	571
SRO 1203 (I)/2008	Non-Banking Finance Companies and Notified Entities Regulations, 2008 issued for the regulations of NBFCs carrying out leasing, investment finance services, housing finance services, asset management services and investment advisory services and their business activities and notified entities being managed by the aforementioned NBFCs	572
SRO 1261 (I)/2008 02 December 2008	Certain clauses and sub-clauses in Part I of the Fourth Schedule and in Part I of the Fifth Schedule of the Companies Ordinance, 1984 deleted	573
SRO 1307(I)/2008 31 December 2008	Group Companies Registration Regulations, 2008 issued	574

# **SYNOPSIS OF IMPORTANT CASE LAWS**

## **DIRECT TAXES**

**Note:** Members are advised to read the complete judgment for better understanding of the respective issues.

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
2008 PTD 2019 (2008) 99 Tax 1 Supreme Court of Pakistan	<p><b>SECTIONS 14, 50, 50(5) OF THE INCOME TAX ORDINANCE, 1979</b></p> <p><b>FACTS OF THE CASE</b></p> <p>In this case, the income tax authorities withdrawn the exemption on the ground that the petitioners were registered as commercial importer/ exporter and therefore, goods imported by the assessee used in assembling of computers could not be termed or classified as goods imported for setting up an industrial undertaking</p> <p><b>DECISION</b></p> <p>The Hon'ble Supreme Court has refused the leave to appeal and held that where cancellation of exemption certificate was never challenged by the petitioners before any forum, rather accepted impliedly, it cannot be challenged before the Supreme Court</p>
2008 PTD 773 (2008) 98 Tax 123 Lahore High Court	<p><b>SECTIONS 65, 66A OF THE INCOME TAX ORDINANCE, 1979</b></p> <p><b>SECTIONS 122(4A) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b></p> <p>In this case, the Income Tax Department contended that the provisions of section 122 of the Ordinance are retrospective and shall apply even on the proceedings finalized under the repealed Ordinance which is evident from the construction of this section</p> <p><b>DECISION</b></p> <p>The Hon'ble High Court held that the provisions of section 122 are not retrospective in nature and that it is settled principle of law that no new legislation can extend a limitation which has already expired in respect of earlier laws in view of section 6 of the General Clauses Act, 1897. Further it was held that the provisions of section 122 would not apply on closed and finalized transactions</p>
2008 PTD 1075 (2008) 98 Tax 80 Sindh High Court	<p><b>SECTIONS 12, 13 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>RULE 9(3), 9(5)(b) OF THE INCOME TAX RULES, 2002</b></p> <p><b>FACTS OF THE CASE</b></p> <p>In this case, the Taxation Officer included repair and maintenance expenses of vehicle provided by the employer in the employee's salary (assessee) treating it as a perquisite. The CIT(A) allowed the appeal but the ITAT upheld the order of the Taxation Officer by observing –</p> <p>"From the above discussion it appears that running and maintenance expenses of a vehicle provided by the employer to the employee directly incurred by the employer come within the definition of perquisite and will be included in the taxable income of the applicant."</p> <p><b>DECISION</b></p> <p>The Hon'ble High Court upheld the view taken by the ITAT's stating that "we do not find any illegality, infirmity and perversity in the order of the ITAT which is maintained and this Income Tax Reference Appellate is dismissed"</p>
2008 PTD 1487 (2008) 98 Tax 208 Sindh High Court	<p><b>SECTIONS 13(1)(a), 61, 62, 143B OF THE INCOME TAX ORDINANCE, 1979</b></p> <p><b>SECTIONS 133(4) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b></p> <p>In this case, the assessee filed the return of the income but did not provide any documents or material as evidences or support of the return on the demand of the Assessing Officer. The Assessing Officer finalized the assessment order to his best judgment due to non-production or providing insufficient records/ documents by the assessee upon serving notice under section 62 of the repealed Ordinance. The CIT(A) and the ITAT had confirmed the assessment order passed by the Assessing Officer on the basis that from the conduct of the assessee it was clear that he had failed to furnish sufficient materials/ records/ documents in support of his case</p>



2008 PTD 1525  
(2008) 98 Tax 204  
Lahore High Court

#### DECISION

The Hon'ble High Court also dismissed the appeal on the ground that the below authorities had based their decisions on the facts which did not give rise to any legal controversies

#### SECTIONS 62, 66A OF THE INCOME TAX ORDINANCE, 1979

##### FACTS OF THE CASE

In this case, the Assessing Officer finalized the assessment order by applying 50% gross profit (G. P.) rate which was upheld by the CIT(A). The Inspecting Additional Commissioner (IAC) exercising the powers conferred on it under section 66A of the repealed Ordinance cancelled the assessment order and made re-assessment on the basis that the G. P. is inappropriately calculated. The order of the IAC was not approved by the ITAT and the same was challenged by the Income tax department before the High Court

#### DECISION

It was held by the Hon'ble High court that the IAC is not competent to re-open the assessment which has merged into the appellate order passed by the CIT(A) and if the IAC passes any order contrary to the above, it would be considered illegal

#### SECTIONS 85, 129, 132, 134 AND 136 OF THE INCOME TAX ORDINANCE, 1979

##### FACTS OF THE CASE

In this case, the assessment order was not served upon the "Authorized Representative" of the appellant/ assessee who is neither assessee nor liable to pay tax on behalf of the assessee and the period of computation of limitation was determined from the date of the service of the assessment order upon the Authorized Representative. An appeal was file by the assessee for determining the validity of the assessment order but the appeal was dismissed both by the CIT(A) and ITAT on the grounds that the appeal was hit by time limitation

#### DECISION

It was held by the Hon'ble High Court that the appeal was erroneously been held to be barred by limitation. It was further held that the assessment order in terms of section 85 of the repealed Ordinance should be served upon the assessee or to any other person liable to pay tax on behalf of the assessee, but not to the Authorized Representative who is neither assessee nor liable to pay tax on his behalf. Accordingly, the period of limitation would not commence from the service of order to the assessee's Authorized Representative

#### SECTIONS 32, 66A AND 136 OF THE INCOME TAX ORDINANCE, 1979

In this case, it is held by the Hon'ble High Court that the assessee can apply both methods of accountings according to the nature of the transactions and that cash system can be applied by the assessee for sticky and irrecoverable loans while applying mercantile method of accounting for the rest of the transactions

#### SECTIONS 2(11), 22 AND 27(2) OF THE INCOME TAX ORDINANCE, 1979

##### FACTS OF THE CASE

In this case, the tax department charged tax on gain on the sale of a personal plot by the individual taxpayer treating it as trading activity. The ITAT has held that the profit/gain of the aforesaid plot does not fall under the purview of adventure in the nature of trade as business income assessable under section 22 of the repealed Ordinance. The CIT filed appeal before the High Court, for determining the validity of the order in the scenario where taxpayer admitted the purchase of the commercial plot for investment purposes

#### DECISION

It was held by the Hon'ble High Court that no material evidence was found to make the sale of commercial plot an adventure for business to conclude that it was held for trading to earn profit. Also held that mere change in investment would not amount to adventure in the nature of trade. Further that legal representative of deceased are liable to pay tax imposed on deceased assessee, provided the claim is made by the Tax Authority within reasonable time

#### SECTION 170(2)(C) OF THE INCOME TAX ORDINANCE, 2001

##### FACTS OF THE CASE

In this case, refund available to the taxpayer was refused by the Income Tax Department on the grounds of being barred by time limitation for the reason that the refund application was filed after the time limited provide in section 170 of the Income Tax Ordinance, 2001

97 Tax 27  
Lahore High Court

97 Tax 64  
Sindh High Court

97 Tax 194  
Sindh High Court

97 Tax 16  
2008 PTD 378  
ITAT



97 Tax 19  
2008 PTD 378  
ITAT

**DECISION**

The learned ITAT held with reference to the cases decided by Superior Courts that refund cannot be refused on account of limitation period

**SECTION 63, 80D & 2(16)(b) OF THE INCOME TAX ORDINANCE, 1979****FACTS OF THE CASE**

In this case, the assessee (Pakistan Hockey Federation) a sport organization which was exempt from the tax did not file the return of the income. Ex-parte assessment was made by the Assessing Officer treating it as a body corporate whereby tax levied under section 80D of the repealed Ordinance

**DECISION**

It was held by the learned ITAT that a body corporate formed by or under any law for the time being in force falls under the definition of a Company. Pakistan Hockey Federation falling within the four corners of the definition of a Company is liable to pay turnover tax under section 80D unless it is proved that the sources of receipts are from non-commercial activities

97 Tax 25  
2008 PTD 278  
ITAT

**SECTION 122(5A) OF THE INCOME TAX ORDINANCE, 2001****FACTS OF THE CASE**

In this case, amendments through corrigendum were made in the assessment order after finalization of the first assessment by the Assessing Officer without serving any notice upon the taxpayer. A question was raised in the appeal that whether there exists any provision in the law which provides power to the Assessing Authority to amend any assessment after finalization through corrigendum

**DECISION**

It was held by the learned ITAT that there is no provision of law which authorizes issuance of a corrigendum after an assessment is finalized. Once an assessment is finalized, the only way an Assessing Officer could modify the earlier order is by resorting to the provisions relating to rectification of mistakes and for which a statutory notice is a mandatory requirement. There is no concept of issuance of corrigendum and as such rectification without a mandatory notice is null and void and without any legal force. The corrigendum is illegal and it cannot, in any way, change the fate of an order earlier passed

The learned ITAT commenting on the merits of the case held that the provisions of section 80C(5A) of the repealed were not applicable for assessment year 2000-2001

97 Tax 81  
2008 PTD 47  
ITAT

**SECTIONS 66A, 62 OF THE INCOME TAX ORDINANCE, 1979****FACTS OF THE CASE**

In this case, the IAC annulled the assessment order invoking section 66A on the grounds that the assessment finalized was erroneous and prejudicial to the interest of revenue. Assessee filed appeal before the learned ITAT against the order of IAC and during pendency of the appeal the Assessing Officer finalized the re-assessment order under section 62/66A of the repealed Ordinance

**DECISION**

It was held by the ITAT that the IAC cannot invoke the provisions of section 66A on arbitrary, vague and fanciful assumption without proper reasons and materials, and the ITAT annulled the order passed under section 66A and restored the original assessment order passed under section 62 of the repealed Ordinance

97 Tax 121  
ITAT

**SECTION 13(1)(d) OF INCOME TAX ORDINANCE, 1979****FACTS OF THE CASE**

In this case, the assessee was constructing a showroom/ shop which could not be completed at the end of the assessment year 1998-99. The assessee capitalized the construction amount in his books of account in the percentage/proportion of completion of construction. The Assessing Officer had assumed it as the completed activity at the end of the assessment year and charged the difference of capitalized amount and his assumed completed amount of construction to tax being unexplained income under section 13(1)(d) of the repealed Ordinance. The CIT(A) annulled the order of the Assessing Officer on the grounds that the Assessing Officer was not justified in making valuation of incomplete showroom/ shop by considering it as completed one without any documentary evidence



97 Tax 229  
2008 PTD 383  
ITAT

#### DECISION

On the appeal filed by the Income Tax Department, it was held by the ITAT that without having proper information and documentary evidence, the Assessing Officer cannot make valuation of incomplete showroom/ shop. The ITAT rejected the Departmental appeal and confirmed the order of the CIT (A), holding that section 13(1)(d) was not applicable in this case

#### SECTION 23(XVIII) OF INCOME TAX ORDINANCE, 1979

#### FACTS OF THE CASE

In this case, the assessee claimed fines and penalties as expenses against its income which were disallowed by the Assessing Officer and the order of the Assessing Officer was upheld by the CIT(A)

#### DECISION

The ITAT following the decision of the Hon'ble Supreme Court of Pakistan has held that fines or penalties imposed due to irregularity committed by assessee for non-adherence to statutory provisions are not to be allowed as expenses

## INDIRECT TAXES

CITATION	SECTION	ISSUES INVOLVED
2008 PTD 1 Lahore High Court		<p>In this case, the petitioner filed Writ Petition challenging the order of the Collector (Appeals) wherein the petitioners application for stay of the recovery of sales tax liability was turned down on the plea that sub-section (4) of section 45-B of the Sales Tax Act, 1990 has been omitted through the Finance Act, 2006 and as such the remedy of Interim injunction in appeal is no more available</p> <p>It was held that omission / amendment of this sub section has enlarged the scope and powers of Collector (Appeals). If the appellant establishes a prima facie case, threat of irreparable loss and balance of convenience in his favour, the Collector (Appeals) has powers to grant Interim relief by imposing condition or furnishing of adequate security</p>
2008 PTD 17 CESTAT		<p>In this case appellant's input tax was held inadmissible on the ground that appellant was registered as a wholesaler while actually he was providing services as a manufacturer</p> <p>It was held that on factual inquiry, copy of registration application produced by the appellant indicated its principal business activity as manufacturer but department registered it as a wholesaler. Appellant's claim for input tax credit was therefore in order as being supported by proper Sales-tax invoices</p>
2008 PTD 29 CESTAT (Customs)	2(bb)	<p>In this case appellant lodged a refund claim of the amount that was collected in excess by the department under section 2(bb) of the Customs Act, 1969 without issuance of show cause notice. The Assistant Collector refused the refund holding that the appellant had deposited the duties and taxes before the release of the goods without challenging the reassessment</p> <p>It was held that records of the appellant disclosed that additional duties were collected by the department after the goods were released. Reassessment could not be effected without issuance of a show cause notice under section 32 of the Customs Act, 1969. As such, the appellant was entitled to refund</p>
2008 PTD 101 CESTAT (Sales Tax)	13	<p>In this case, Collector (Appeals) upheld recovery of Sales tax on cotton seed oil and on oil dirt along with additional tax and penalty</p> <p>It was held by the CESTAT that the appellant was exempted from the levy of Sales-tax in terms of entry No.42 of the Sixth Schedule to the Sales Tax Act, 1990 according to which supplies made in Pakistan by a</p>



2008 PTD 103 Lahore High Court (Sales Tax)	3, 2(41)(46)	<p>manufacturer whose annual turnover from taxable supplies made in any tax period during last 12 months did not exceed 5 million was exempt. In the instant case, value of supplies was less than Rs. 3 Million and therefore, the appellant was entitled to exemption</p> <p>In this case, the manufacturers of steel products under Sales Tax Special Procedure Rules, 2007 were subjected to pay sales tax at Rs.4.75 per unit of electricity consumed since there was no option in the Rules to pay sales tax through standard rates</p> <p>It was held that electricity consumption could not form basis for charging sales tax, the special procedure is ultra vires and the GST collection mechanism is out of the scope of section 3 of the Sales Tax Act, 1990. Taxable supply and taxable activity shall be made the basis for charging sales tax</p>
2008 PTD 89 FTO (Sales Tax)	9(2)(b)	<p>In this case, the complainant was refused refund and was also demanded to surrender the input tax suffered on goods destroyed/damaged/expired/returned on the pretext that the Supreme Court has suspended the operation of Lahore High Court's judgment in the case of Mayfair Spinning Mills. It was held by the FTO that from Article 189 of the Constitution of Pakistan it is clear that only that decision of the Supreme Court will be binding which decides a question of law or is based upon a principle of law. The order suspending the operation of judgment is not covered under Article 189 of the Constitution and therefore, is not binding on the Courts in Pakistan except the parties in that case</p>
2008 PTD 509 Lahore High Court	45-A, 66 & 67	<p>Petitioner's withheld refund claim not released despite favourable order of the Collector (Appeals) and clarification from the FBR</p> <p>It is held that since as the order in appeal has attained finality, refund shall be issued</p>
97 Tax 5 CESTAT	36(1)	<p>In this case, the audit of the appellant was conducted upto 30 June 2001 and show cause notice was received by the appellant on 07 July 2006 wherein it was alleged that there was a difference in the income tax return and sales tax return of the appellant and as such the sale was suppressed to the extent of Rs.1,583,989/-. The appellant challenged the above on the ground that the show cause notice was barred by time and also challenged that for the purpose of sales tax, income tax record cannot be relied upon</p> <p>It is held that as the show cause notice was not served within the time prescribed and also the income tax record cannot be made basis for adjudging the liability under the Sales Tax Act, 1990, recovery cannot be effected by the department and the show cause notice was set-aside</p>
Tax 97 No.6 CESTAT	33(2), 34, 36(2)	<p>In this case, the audit records of the appellant for the tax period 2003-04 revealed that it had not paid sales tax on purchase of cotton lint and thus vide order in original and order in appeal, the appellant was held liable to pay default surcharge and penalty. The appellant contested the case that SRO 463(I)/2007 dated 09 June 2007 allowed exemption from default surcharge and penalty if the principal amount is paid by 30 June 2007. However, much before 30 June 2007 the appellant had discharged its liability by paying the principal amount of sales tax. Further the FBR broadened the scope of SRO 463 vide notification No.999(I)/2007 dated 29 September 2007 by allowing waiver of default surcharge and penalties to the cases where principal tax was paid even prior to 09 June 2007</p> <p>The appeal was accepted on the condition of production of evidence of payment of the principal amount prior to 30 June 2007</p>



2008 PTD 1414  
FTO (Sales Tax)

11(2) & 36(1)

In this case, the complainant was issued a show cause notice alleging illegal input tax adjustment. Order in original was passed after expiry of prescribed period of 90 days without obtaining extension of time from the competent authority

It was held that the Order in Original was hit by time limitation as provided in sections 11(4) and 36 (3) of the Sales Tax Act, 1990 and was therefore void and illegal and liable to be cancelled in the light of the decision of the President of Pakistan in Complaint No.805/2003 whereby the department's plea that time limit under section 36(3) was not mandatory was rejected

2008 PTD 1383  
CESTAT  
(Sales Tax)

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In this case, the appeal filed by 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