



News & Views

Jan. 2007
To
Dec. 2007
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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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UP COMING EVENT

*Members are requested to attend
discussion on*

The Finance Act, 2009

Monday 6th July, 2009

at Bar Chambers, Karachi

FROM THE DESK OF THE PRESIDENT

God helps those who help themselves.

When we talk about country, the proverb described that a country can not be viable, if the people of that country is not equip with the latest knowledge and are reluctant to work hard. A number of institutions took initiative to educate the people of Pakistan in order to make themselves strong enough who can plausibly faced any circumstances. Same action has been taken by the Income Tax Bar Association.

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 tax knowledge, which ultimately enhance the quality of the bar members. The Income tax bar arranges seminars frequently to give immense knowledge either to the bar members and readers.

The Bar has an honor to do its best to facilitate members by keeping an eye on the changes taking place in the profession. Almost all the bar members always want to keep abreast of latest and update information regarding the profession.

To achieve the above objective, it is the Bar's tradition to place before their members, news and views which contains the information about Circulars, SRO's/Notifications and the essential amendments and decisions of Supreme Courts, Honorable High Courts and Income Tax Appellate Tribunal. Now, the issue for the year 2007 is in your hands. We are quite optimistic that this issue will broaden the reader's understanding about current pronouncements and would also prove to be helpful in handling the legal issues, which leaves a positive impact on the consequences.

We feel pride that the news and views team consist of intelligent, hard working, competent and talented professionals with excellent academic background. It is needless to highlight the importance of a team work as greater triumphs cannot be attained individually, but always with the support of talented group of peoples.

In the end, I would like to assure the bar members as well as the readers that we will overcome all the issues which we envisaged before and soon be able to mitigate the deficiencies completely Inshallah. I am assuring you of our commitment for continuity of these informative publications.

Pakistan Zindabad

Najam Irshad Khan

FROM THE DESK OF THE CONVENER

By the grace of Allah, we are able to publish yet another issue of news and views which covers the period from Jan, 2007 to Dec, 2007. The current issue of the news and views covers the Circulars, SRO's/Notifications and important judgments of the Learned Income Tax Appellate Tribunal, Honorable High Courts and Supreme Court.

I am indebted to my Learned Committee members, who have the propensity to serve the bar in an excellent manner and did the same in a reasonable fashion. We received a positive feedbacks on our previous news and views release which, induced us to publish yet another issue for the guidance of the bar members, an end users, as well.

I am confident, that the current release will broaden the understanding of the reader and definitely will help to resolve all the ambiguities, they may envisage before. The Committee continuously trying to build such a system which the delays, as were in the past, will completely be eliminated. I am a sure you that, by the grace of Allah, we will achieve our optimal desires soon, Inshallah.

Regards

Mohammad Rehan Siddiqui

IMPORTANT CIRCULARS & NOTIFICATION/SROS

DIRECT TAX

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAR LIBRARY REF: NO.
Circular No. 1 of 2007 Date: 02-07-2007 No. F.4(1)ITP/2007-(EC)	Explanations regarding amendment made in the various provisions of the Income Tax Ordinance, 2001 (The Ordinance) vide Finance Act, 2007.	418
Circular No. 02 of 2007 Date: 04-07-2007 No. F.4(1)ITP2007-CVT	Amendment has been made in the Finance Act, 2007 whereby CVT is not payable in respect of power of attorney, which is revocable, time bound (not exceeding 60 days) and between: Spouse, Father and son or daughter, Grand parents and grand children and Brother and sister and on import of motor vehicles.	419
Circular No. 3 of 2007 Date: 29-09-2007 No. F.4(29)ITP/2002-S-155	Clarification regarding queries in respect of rental income under section 15 and deduction of tax under section 155 of the Ordinance.	420
S. R. O. 481(I)/2007 Date: 09-06-2007	Government has directed the Banks to issue Computerized Tax Payment Receipts (CPR) to the taxpayers.	421
S. R. O. 614(I)/2007 Date: 18-06-2007	Vide the said SRO imported motor vehicles exempted from the levy of CVT.	422
S. R. O. 662 (I)/2007 Date: 28-06-2007	Electronic filing of Income tax returns and withholding tax statements become mandatory from first date of July, 2007 onwards.	423
S. R. O. 661(I)/2007 Date: 02-07-2007	Tax at the rate of two and a half per cent at the time of sale of motor car was levied. Manufacturer or authorized dealer (being withholding agent),irrespective of the date of booking or advance payment made by the purchaser, are required to collect advance tax where sale invoice is issued and delivery of motor car is made.	424
S. R. O. 669(I)/2007 Date: 02-07-2007	Advance tax on payment made to the following companies is required to be withhold under section 153 of the Ordinance, 2001 where previously it was under section 50(4) of the repealed Income Tax Ordinance, 1979 that are exempted: <ol style="list-style-type: none"> 1. Companies receiving payments for the supply of electricity and gas, and 2. Pakistan State Oil Company Limited, Pakistan Burmah Shall Limited, and Caltex Oil (Pakistan) Limited, receiving payments for the supply of petroleum products. 	425
S. R. O. 755(I)/2007 Date: 27-07-2007	The income derived by Gwadar Free Zone Company Limited, PSA Gwadar International Terminal Limited and Gwadar Marine Services Limited from Gwadar Port operations is exempt from the tax for twenty years beginning from the year in which the company is set up or commercial operation is commenced, whichever is later.	426
S. R. O. 847(I)/2007 Date: 22-08-2007	Tax deducted on payments received by a manufacturer of iron and steel products relating to sale of goods and payments on account of sale of goods by individuals or association being manufacturer of such goods being a manufacturer of such goods are out of the ambit of final tax.	427

INDIRECT TAX

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAR LIBRARY REF: NO.
C. No. 1/2-STB/2006(pt.) Date: 08-01-2007	Directive for implementation of Notification SRO 732(I)/2006 dated July 13, 2006 read with SRO 781(I)/2006 dated August 01, 2006 in respect of Minimum assessable values fixed under section 2(46) of incandescent lamps, tubes lights and energy savers for assessment of sales tax at import stage.	428
C. No. 3(72)ST-L&P/97(Pt-II) Date: 11-01-2007	Clarification issued for Refund of Sales Tax paid on transfer of Second hand vehicles.	429
C. No. 3(62)STP/97(Pt-IV) Date: 11-01-2007	Specification of categories of importers not required to be registered provided they are not engaged in any other taxable activity relating to taxable supplies or taxable services. However, requirement of payment of sales-tax on imported will continue unchanged unless goods are expressly exempted from sales tax.	430
Sales Tax General Order No. 02/2007 Date: 06-02-2007	Instructions relating to Refund claims relating to local supplies made by the five Export-Oriented Zero-rated Sectors and manufacturers-cum-exporters and commercial exporters of input tax in respect of purchases made on payment of sales tax prior to June 06, 2005 if goods have been exported by January 31, 2005.	431
Circular letter No. 4/57-STB/97 Date: 14-02-2007	Clarified that Expoxidized Soyabean Oil (PCT heading 15.18) is not chargeable to excise duty being excluded from the Second Schedule to the Federal Excise Act, 2005, it is chargeable to sales tax at standard rate of 15%.	432
Circular letter No. 4/2-STB /2007 Date: 12-03-2007	Directed that all Suzuki Jeeps (1000 cc) of field formations viz. Customs, Sales Tax and Income Tax, which have completed life/mileage should be condemned after fulfilling all the prescribed codal formalities of Staff Car Rules, 1980, before April 30, 2007.	433
Circular letter No. 4/57-STB/97 Date: 30-03-2007	Solvent Extraction Unit allowed to file revised Sales Tax Returns for the period financial year 2004-2005 onwards and Collectors are requested to nominate suitable staff to assist the units in completion of reconciliation. The principal amount of sales tax, if any, shall be deposited by the units through revised sales tax returns by June 15, 2007.	434
General Order under C. No. 3(6) ST-L&P/2002 Date: 24.04.2007	Procedure and conditions specified for Inter-tax Refund/Adjustment Procedure of liability of customs duty, federal excise duty, sales tax or income tax payable on written request of the taxpayer.	435
Circular letter No. 1(15)-STT /2005 Date: 02-05-2007	Zero-rating on supply of Natural Gas (by SNGPL) to further 48 manufacturing units/sales tax registered persons allowed by amendment in SRO 536(I)/2006 vide Notification No. 355(I)/2007 dated April 28, 2007 explained.	436
SRO 316(I)/2007 Date: 12-04-2007	Plant, Machinery, Equipment and accessories including capital goods, if not manufactured locally, allowed exemption from whole of customs-duty and sales-tax, if imported for the development of Special Industrial and Economic Zones including China-Pakistan Industrial and Economic Zones (CPEZ) and for establishing projects in the Zones, subject to fulfillment of qualifying conditions.	437
SRO 362(I)/2007 Date: 02-05-2007	Amendments made in Sales Tax Special Procedure Rules, 2006 in respect of procedure for payment of sales-tax by retailers and substitution of prescribed format of "Monthly Sales Tax Return-cum-Payment Challan for Retailers".	438
SRO 363(I)/2007 Date: 02-05-2007	Exemption of penalty and default surcharge imposed under Section 33 and 34 allowed for the registered retailers, who discharge their sales tax liabilities by making payment of sales tax @ 1.25% of taxable supplies and income tax @ 0.75% of taxable supplies made during the period July 01, 2006 to April 30, 2007, subject to fulfillment of specified qualifying conditions.	439

CORPORATE

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAR LIBRARY REF: NO.
Circular No. 1 of 2007 (Withdrawn by Circular No. 13 of 2007 dated November 12, 2007) Date: 15-01-2007	Revised Eligibility criteria specified by SECP to the effect that all Pakistani nationals who have a valid NTN are entitled to contribute to the Pension Fund authorized under the Voluntary Pension System Rules, 2005, so as to bring it in line with the provisions of Income Tax Ordinance, 2001.	440
	Further revised criteria spelt out in Circular No. 13 of 2007 dated November 12, 2007 (Refer herein under).	441
Circular No. 2 of 2007 Date: 26-02-2007	Listed Companies advised to disclose specified information regarding credit rating in all documents through which application/funds from public are invited.	442
Circular No. 3 of 2007 Date: 10-04-2007	Enhancement of Minimum Required Paid-up Capital for Insurers/Takaful Operators for Life Insurers and non-life insurers under the Insurance Ordinance, 2000 over a period from 2007 through 2011.	443
Circular No. 4 of 2007 Date: 03-05-2007	As empowered under Sections 117 and 167 of the Insurance Ordinance, 2000, the Federal Government has constituted Small Disputes Resolution Committee vide SRO 417(I)/2005 dated May 11, 2005, whose composition specified with their working, duties, powers and responsibilities.	444
Circular No. 5 of 2007 Date: 28-05-2007	100% foreign Equity in the Insurance Business in Pakistan allowed on fulfillment of specified conditions.	445
Circular No. 6 of 2007 Date: 13-06-2007	Directives to NBFCs to strictly comply with all the documentary requirements at the time of opening of new Trading accounts with their panel of Brokers i.e. execution of account opening forms and submission of prescribed documents, including Memorandum & Articles of Association, Board Resolution and list of authorized signatories.	446
Circular No. 7 of 2007 Date: 27-06-2007	Deferment of Implementation of IFRIC Interpretation 4 "Determining whether an arrangement contains a lease" for Independent Power Products (IPPs) for a further period of 2-years i.e. till June 30, 2009	447
Circular No.8 of 2007 Date: 04-07-2007	Companies Easy Exit Scheme (CEES) year 2007 re-launched providing an opportunity to the dormant unlisted public and private companies having no assets or liabilities and not carrying business, for taking exit route and get their names struck off companies after fulfillment of the specified formalities. CEES operative for a period of 4-months i.e. from July 15, 2007 to November 15, 2007, Period of applicability subsequently extended upto January 31, 2008.	448
Circular No. Enf/Div-IV/Circular/1/2007 Date: 12-07-2007	Clarification that amendments made through Finance Act, 2007 in Section 158(1) for holding AGM and Section 233 for laying financial statements for reduction from 4 months to 3 months, shall not be applicable on the companies whose financial year has already closed on June 30, 2007.	449
Circular No. 10 of 2007 Date: 05-10-2007	All licensed general takaful companies directed to ensure that their agents attend Orientation Program of a professional training required by the General Takaful Agents, as specified by SECP.	450
Circular No. 11 of 2007 Date: 23-10-2007	Clarification for all NBFCs holding investment advisory, asset management service licenses and heads of investment companies on Deposit of Margins and mark-to-market losses by Collective Investment Schemes with National Clearing Company of Pakistan Limited.	451
Circular No. 12 of 2007 Date: 30-10-2007	Insurers/Takaful Operators advised to submit prescribed features of their respective reinsurance/retakaful treaty arrangements.	452

Circular No. 13 of 2007 Date: 20-11-2007	Revised Eligibility criteria issued whereby all Pakistani nationals having a valid NTN or CNIC shall be eligible to contribute to the Pension Fund authorized under the Voluntary Pension System Rules, 2005. (Earlier SECP Circular No. 1 of 2007 dated January 15, 2007 withdrawn).	453
Circular No. 14 of 2007 Date: 20-11-2007	All Insurers/Takaful Companies directed to report compliance of maintaining statutory deposits with the SBP by providing relevant documentary proof duly verified by SBP to SECP.	454
Circular No. 15 of 2007 Date: 23-11-2007	All NBFCs undertaking business of Investment Finance Services, Leasing, Housing Finance Services, Venture Capital Investment, Discounting Services, Investment Advisory Services and Asset Management Services to conduct their businesses in conformity with NBFCs Rules 2003 as amended and Non-Banking Finance Companies and Notified Entities Regulations, 2007 notified in Official Gazette on November 21, 2007. [SECP's Circular No. 2 of January 21, 2004 cancelled with immediate effect].	455
Circular No. 16 of 2007 Date: 05-12-2007	Period of applicability of Company Easy Exit Scheme (CEES) extended upto January 31, 2008 (for details Refer Circular No. 8/2007) Later, finally extended upto June 30, 2008)	456
Circular No. 17 of 2007 Date: 18-12-2007	Non-applicability of Regulation 23 of NBFC and Notified Entities Regulation, 2007 relating to classification and provisioning of non-performing assets, for the period ended December 31, 2007. The effective date of applicability of the said regulation to be notified.	457
Circular No. 8 of 2007 Date: 19-12-2007	Companies engaged in the business of courier services advised to be extremely cautious and to avoid transmitting into or outside Pakistan any such parcel containing drugs without support of NOC of the Government of importing/exporting country and also discourage sale of drugs through unauthorized dealers including drugs subscribed through internet pharmacies.	458
SRO 09(I)/2007 Date: 04-01-2007	Exemption from application of Clause 6 of Part-I of the Fourth Schedule of the Companies Ordinance, 1984 further extended till 30.06.2007 for listed companies and their subsidiaries.	459
SRO 10(I)/2007 Date: 05-01-2007	Rules 9A to 9G inserted in Companies (General Provisions and Forms) Rules, 1985 in regard to mode of submission of Electronic documents to the SECP or the Registrar.	460
SRO 430(I)/2007 Date: 22-05-2007	IAS-41 to be followed in regard to accounts and preparation of balance sheets and profit and loss accounts of listed companies engaged in Agriculture. Provided that SECP may on its own motion or upon an application, grant exemption to any company or class of companies, if it is in public interest to do so, from compliance with all or any of the requirements of the aforesaid IAS.	461 462
SRO 431(I)/2007 Date: 22-05-2007	Islamic Financial Accounting Standard 2 issued by ICAP shall be followed in regard to the financial statements by companies and modarabas while accounting for Ijarah (Lease) transactions as defined by the said Standard, with enabling power with SECP for granting exemption to any company or any modaraba from compliance with all or any of the requirement, if it is in the public interest.	463
SRO 687(I)/2007 Date: 06-07-2007	Further exemption to listed companies and their subsidiaries upto December 31, 2007 from application of clause 6 of Part-I of the Fourth Schedule to the Companies Ordinance, 1984.	464
SRO 819(I)/2007 Date: 10-08-2007	Notification of class of companies to be exempt from the requirement of obtaining the authority of special resolution for making investment in associated companies or undertakings as required under S.208(1) to the extent provided in the said notification.	465
SRO 859(I)/2007 Date: 21-08-2007	Substitution of Fifth Schedule to the Companies Ordinance, 1984 dealing with "Requirements as to Balance Sheet and Profit & Loss Account of Non-Listed Companies".	466

SRO 860(I)/2007 Date: 21-08-2007	Accounting and Financial Reporting Standards for Medium and Small Sized Entities approved by the council of ICAP in its meeting held on July 28, 2006 shall be followed, in regard to the accounts and preparation of balance sheet and profit and loss accounts of non-listed companies, without any modification or alteration, unless such modification or alteration is approved by the Commissioner.	467
SRO 1131(I)/2007 Date: 21-11-2007	Amendments made in Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003.	468
SRO 1132(I)/2007 Date: 21-11-2007	Non-Banking Finance Companies and Notified Entities Regulations, 2007 notified.	469
SRO 1044(I)/2007 SRO 1045(I)/2007 SRO 1046(I)/2007 Date: 24-10-2007	Delegation of powers and functions of the Executive Director (Securities Market Division) by SECP to the Commissioner.	470

SYNOPSIS OF IMPORTANT CASE LAW

DIRECT TAX

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

CITATION	ISSUES INVOLVED
2007 PTD 1279 Supreme court of Pakistan	Section 136 of Income Tax Ordinance, 1979 The Hon'ble Supreme Court has confirmed the decisions of the High Court that the amount of gratuity payable to employees was a proper charge on the income of the assessee and was therefore, admissible as an expense and that no question that was not raised before Appellate Tribunal can be discussed and stand valid in High Court and Supreme Court.
97 TAX 285 Supreme Court of Pakistan	Section 13(1)(aa), 13(1)(b) of Income Tax Ordinance, 1979 In this case, The Hon'ble Supreme Court has held that without transfer of property in its purchaser's name in the proper manner recognized in law, its status would remain unchanged and would be treated as property of original owner for all practical purposes including assessment of income tax and such agreement to sell would or would not create title, right or interest in property for purpose of taxability.
2008 PTD 253 97 TAX 201 Supreme Court of Pakistan	Section 2(21), 2(24), 50(5), 56, 61, 63 80DD, 156(1) of Income Tax Ordinance, 1979 In this case, The Hon'ble Supreme Court has held that the decision of the question as to whether assessee was liable to the payment of income tax or not depends on the determination of fact whether the company established its office only in tribal area was carrying its business only in non-taxable areas or the income was also being derived from taxable areas also. Such being a pure question of fact, could not be decided by raising a presumption only on the basis of location of the manufacturing unit or the registered office of the company in the non-taxable area. Immunity from payment of income tax cannot be claimed without establishing the fact that taxable income was not being derived from the area where the Income Tax Ordinance, 1979 as applicable. Such essential aspects of the case having been over locked in the judgment which has caused serious prejudice to the case of department on merits, Supreme Court reviewed its judgment and in consequence thereto the department was declared to be competent to proceed in the matter in accordance with law.
2007 PTD 1720 96 TAX 207 High Court of Pakistan	Section 32, 135, 136(2) of Income Tax Ordinance, 1979 -- In this case, appellant had filed an appeal for all the relevant years i.e. 1988-89 to 1992-1993. Department on the other hand only filed an appeal for the assessment year 1988-89. ITAT restored the rejection of accounts and addition in the trading results on the basis of assessment year 1988-89. High Court has held that such action of ITAT is not valid as every year is a separate year and the action of the ITAT could not be sustained, even in the circumstances where both the parties given their consent to do so yet such consent could not be legalized being against the spirit of the law.
2007 PTD 1577 96 TAX 65 High Court of Pakistan	Sections 13(1), 2nd Proviso. 136(2), of The Income Tax Ordinance, 1979 – High Court has held that the question asked in the reference before the ITAT could not be changed while filing reference before the High Court after rejection from the ITAT. It was also held that additional grounds or question could not be raised after expiry of a limitation period for filing reference application.

2007 PTD 1570
96 TAX 29
High Court of Pakistan

**Second Schedule Part-I Clause 77-C, Income Tax Ordinance, 1979 -
Section 151, 159, 239(14)[As Amended By Finance Act (I Of 2003)] And Second Schedule
Part-I of Income Tax Ordinance, 2001 -**

The High Court has held that National Saving Scheme could not deduct tax on the Income from the Investment in Regular Income Certificates. It was also held that at the option of investor the tax so deducted, be either paid in cash to the investor or, if permitted by the scheme, be considered as re-investment by the investor.

2007 PTD 2105
96 TAX 243
High Court of Pakistan

**Income Tax Ordinance, 2001 - Sections 132(2) -
Income Tax Appellate Tribunal Rules, 2005 - Rule 20(2) -
Constitution of Pakistan (1973) - Article 199 -**

Facts of the case

Date of hearing was wrongly noted in the diary of ITAT. Therefore, on that date assessee had not appeared and the tribunal passed the ex-parte order and dismissed the appeal on the date which was not the actual date of hearing.

Decision

The case was set-aside by the High Court and remand back the case to the ITAT for decision on merit. It was also held that the noting of wrong date of hearing in the diary was a sufficient cause for non-appearance of the assessee. Therefore, order passed by the tribunal was without lawful authority and had no legal effect.

2007 PTD 2521
96 TAX 89
High Court of Pakistan

Sections 115(4), 122(5A), 153(1)(c), 153(6) of The Income Tax Ordinance, 2001 -

Facts of the case

The assessee providing stevedoring services through a contract and accordingly filed income tax statement under section 115(4) treating tax deduction on receipts as final tax liability. The receipt treated by the assessing officer as normal receipts and therefore the claim of assessee being covered under final tax regime was rejected by the assessing officer. The first appellate authority rejected the order of the assessing officer and directed that the receipts are covered under FTR. On an appeal filed by the department the Income Tax Appellate Tribunal set aside the order passed by the first appellate authority.

Decision

It was decided by the High Court that the Business receipts from providing the stevedoring services through contract falls within the ambit of section 153(6) of the Income Tax Ordinance, 2001 and tax deducted thereon is full and final discharge of tax liability and set aside the order passed by the Income Tax Appellate Tribunal.

2007 PTD 2352
DTAT 2960
Income Tax Appellate Tribunal
of Pakistan

**Section 221 of Income Tax Ordinance, 2001
Section 156 of Income Tax Ordinance, 1979**

Facts of the case

Assessee filed miscellaneous application. The points raised in the miscellaneous application neither raised by the assessee at any stage during the proceeding with the CIT(A) nor discussed anywhere in the order by the CIT(A).

Decision

ITAT discussed the rectification application.

2007 PTD 2084
DTAT 2943
Income Tax Appellate Tribunal
of Pakistan

Section 11, 19, 58(1), 62, 116-Income Tax Ordinance, 1979

Facts of the case

In this case, Assessee declared rental income which was accepted by the tax authorities in the previous assessment years. The assessing officer was of the view that the property during the assessment year was let out at higher rental value. But no justification was provided by the assessing officer that property had been let out at a higher rent. The assessing officer also imposed penalty under section 116 of the Income Tax Ordinance, 1979 for non filing of wealth statement without issuing notice under section 58 to file wealth statement. It was pleaded that penalty could not be imposed later than June 30, 2000 as provided by provision (2) section 116 of the Income Tax Ordinance, 1979. The imposition of penalty on June 30, 2004 was in excess of lawful jurisdiction, as the notice under section 116 of the Income Tax Ordinance, 1979 issued at the time of original assessment which was hit by limitation on June 30, 2002.

Decision

The ITAT had vacated the order of the Commissioner Income Tax (Appeals). The ITAT directed the taxation officer to accept the declared annual letting value for the purpose of assessing income from property. The ITAT in respect of charging of penalty held that it was without lawful jurisdiction and accordingly dismissed the departmental appeal.

2007 PTD 1203
95 TAX 216
Income Tax Appellate Tribunal
of Pakistan

Sections 58(1), 63, 63, Income Tax Ordinance, 1979

Facts of the case

In this case, while making best judgment assessment, assessing officer excluded the return from the ambit of self assessment scheme (SAS) and selected the case for total audit. The Assessee had failed to attend assessment proceedings and assessing officer finalized the as ex-parte assessment on a date for which the case was not fixed for hearing. Assessing officer failed to record ex-parte proceedings on date of default and proceeded to make his judgment on the subsequent date.

Decision

The ITAT directed the assessing officer to issue fresh notice and ex-parte assessment order was cancelled accordingly as the order on any subsequent date which was not fixed or not a date of actual default is not permissible under the law.

2007 PTD 1626
96 TAX 233
Income Tax Appellate Tribunal
of Pakistan

Section 50(2A), 80-B, 80-D, 134, 143(B) of The Income Tax Ordinance, 1979

Facts of the case

In this case, assessing officer included the subsidies, donation and exchange gain in total turnover for the purpose of charging minimum tax under section 80-D of the Income Tax Ordinance 1979. The assessee filed appeal before Commissioner of Income Tax (Appeal) against the issue, but CIT(A) confirmed the action of assessing Officer. The assessee argued that the assessing officer had included the impugned receipts/gains in the turnover without discussing as to how these were included in the turnover as defined in section 80-D of Income Tax Ordinance, 1979.

Decision

Assessment Order on that point was set aside for de-novo proceedings in respect of charging of minimum tax by the ITAT.

In this case, it was also held by the ITAT that assessing officer was justified in considering that the tax paid under section 50(2A) of the Income Tax Ordinance, 1979 was final discharge of tax liability under section 80-B of the Income Tax Ordinance, 1979 and could not be allowed as a credit against any other tax liability under the Income Tax Ordinance, 1979.

2007 PTD 974
Income Tax Appellate Tribunal
of Pakistan

Facts of the case

Order passed u/s 156 of the Income Tax Ordinance, 1979 after the limitation period of four years. Assessee maintained proper books of accounts which were produced before the assessing officer but he rejected the declared version by using stock phrases.

Decision

ITAT was directed to accept the declared trading result and vacated the order of the CIT(A) by observing the falling:

- If the assessee explained the reason for decline in the sales and gross profit rate, there is no reason to reject the declared version.
- If the assessee in maintaining proper books of accounts as par history then the history of the case should be accepted unless the circumstances to the contrary appeared.
- Low gross profit rate was not a valid ground for the rejection of accounts.
- Disallowances of profit and loss account expenses should be made after confronting the assessee and with specific reasons and keeping in view the past history of the case.

INDIRECT TAX

CITATION	SECTION	ISSUES INVOLVED
2007 PTD 398 H.C. Karachi	Sindh Sale Tax Ordinance, 2000	<p>In this case, the Petitioners challenged the vires of Sindh Sales Tax Ordinance, 2000 inter alia questioning levy of sales tax on services rendered by them. Additionally some of the petitioners also challenged the levy of sales tax on services in respect of fixed charges received by them as entrance fee, annual subscription, monthly subscription, staff bonus and gratuity. The Hon'ble High Court of Sindh after examining the arguments and the provisions of law has held that since Sales Tax Ordinance 2000 was validly enacted and thus was ultra vires the Constitution. However, minutely examining the principles of law, it was held that such Petitioners were not liable for sale tax on services in respect of fixed charges received by them as entrance fee, annual subscription, monthly subscription, staff bonus and gratuity. The learned Members are requested to read the entire extract of the judgment to understand the constitutionality of the provisions of Sindh Sales Tax Ordinance, 2000.</p>
2007 PTD 47 H. C. Lahore	Section 3, 33 & 47 of the Sales Tax Act, 1990	<p>In this case, the taxpayer was called upon by the Department to pay sales tax along with additional tax on the ground that association of the taxpayers of which the Appellant was the member itself approached the Federal Government for constitution of fixed tax regime. The learned Tribunal had held that the Departmental view is correct on the premise that the Appellant was a member of such association and most of the members of the Association accepted the agreement and paid the tax. The Hon'ble High Court on the basis of its earlier judgment reported as 2005 PTD 2436 held that such exercise cannot be done as it was held that levy of tax, its rate and collection does not depend upon the will and agreement of some gentlemen who supposed to represent through taxpayers and other class and that such agreement was never converted in to law through process prescribed. The learned Members are requested to read both the judgments for better understanding of the issue.</p>
2007 PTD 60	Section 13 of the Sales Tax Act, 1990 and Section 19 of the Customs Act, 1969	<p>In this case, in view of certain SROs, the Industrial Unit was granted exemption for setting up new Textile Units. Certain machinery was imported in terms of said SROs for the reason that certain imported parts did not fall within the definition of terms "machinery" and "appliances". The Hon'ble Court after examining the relevant SROs and after carefully examining the definition of expression "machinery", "machine", "appliances" and "apparatus" set aside the orders Where by the Petitioner was denied the exemption.</p>
2007 PTD 250	Section 3 of the Sales Tax Act, 1990 and Section 3 of the Sindh Sales Tax Ordinance, 2000	<p>In this case, the taxpayer was issued a Show Cause Notice inter alia on the ground that it did not pay further tax on rendering services to non-registered persons, which allegedly violated the provisions of Section 3(1A) of the Sales Tax Act, 1990. On the other hand, the taxpayer denied the allegations and contended that Section 3 of the Sales Tax Ordinance, 2000 stipulates chargeability of Sales Tax on services and is restricted to 15% value of the taxable services. The Ordinance does not envisage the levy of further tax to the services rendered to unregistered persons. The Hon'ble Court rejected the contention of appellant and dismissed the reference application after examining the provisions of Section 3 of Sindh Sales Tax Ordinance, 2000</p>

Unreported judgement Hon'ble Supreme
Court of Pakistan

Section 2, 3 and 7
of the Sales Tax
Act, 1990

and Section 3(1A) of the Sales Tax Act, 1990.

Recently the Hon'ble Supreme Court of Pakistan has held in number of cases that Sale of fixed Assets and scrap is liable to Sales Tax. It has been observed that whenever there is a taxable supply by registered person in the course of a taxable activity Sales Tax will have to be levied and if any exemption i.e., the supply is not liable to the levy of the Sales Tax, is claimed then it is for the person so pleads to show that the same is covered under the exemption clause. It was further observed that there is no legal provision excluding the sale of old plant and machinery, vehicles or scrap from the purview of taxable supply. These goods were purchased by the Taxpayer in the course of their taxable activity, their sale cannot be considered as a transaction which is divorced from their normal business and that the said goods are business assets of the Tax payer and both their purchase and sale is a part of their normal business activity. It was further observed that such income being a part of business and investing activity done during the course of business is an act of furtherance of business. Their lordships further observed that no exemption has since been notified by the federal Government in relation to the sale, auction or otherwise disposal of goods, moveable fixed assets including plant and machinery, equipment having no value addition to the goods and for which the input tax was not allowed.

2007 PTD (Trib) 728

Section 36 of the
Sales Tax Act,
1990

In this case, the Assessee was charged additional tax and penalty on the ground that opening balance of carry forward amount of input tax was incorrectly shown and tax payable was converted into refundable carry forward amount. After examination, the learned Tribunal held that neither the Department has brought any evidence to the effect that principal amount of the Sales tax in the form of refund was not due to the Appellants nor such an order for the recovery of the same had been passed by the adjudication officer. It was further held that input tax and adjustment thereof was a substantive right of the taxpayer and could not be taken away or withheld on mere technical grounds. It was held in respect of refund of excess amount of input that the Department was bound to refund the said amount within 90 days of the filing of tax return of non-zero rated supplies and within 30 days of filing of return in case of zero rated supplies. The learned Tribunal further observed that the show cause notice issued in consequence is an audit objection without even mentioning Section 36 which was against the condition precedent of the provisions of Sales Tax Act. Any demand in the form of additional tax and penalty is also therefore illegal and set aside.

2007 PTD 749 (Peshawar)

Sec 7 and 8 of the
Sales Tax Act,
1990

In this case, the taxpayer had claimed input tax adjustment on wires and cables and contended that same fall within the expression "stock in trade", whereas the Department contended that said cables and wires were not used for manufacture or production of taxable supplies, no input tax adjustment can be applied thereon. The Hon'ble High Court after examining Section 7 & 8 held that no input tax adjustment can be claimed on such wires and cables.

2007 PTD 2563 (HC)

SRO 55(1)/96
dated: 01-07-1996
SRO 732(1)/98
dated: 01-07-1998

In this case the taxpayer was alleged by the tax authorities to have deposited sales tax late on two returns. The taxpayer contended that tax was paid on due date i.e., November 20, 1996 through bank drafts. First draft was cleared on November 20, 1996 while second was cleared on November 30, 1996. Taxpayer failed before the adjudicating authorities and appellate forum and was found liable to pay additional tax.

The Hon'ble High Court Lahore decided that banking instrument like pay order or a bank draft do not need any clearance by the bank on which it has been drawn. Only the personal cheques of an individual require clearance. The court further held that revenue does not dispute the tendering of the bank drafts along with returns on November 20, 1996. Clearances on different dates is a matter between two banks. The orders of adjudicating authorities as well as tribunal was set aside.