



News & Views

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

MANAGING COMMITTEE 2009



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FROM THE DESK OF THE PRESIDENT

Nations are mainly emphasized on two things, wisdom and power. Wisdom comes from the education and the experience of the person; and power is achieved when knowledge and experience combine. Here I quote the words of Mr. Immanuel Kant which would be beneficial to broaden the concept of wisdom.

"Men Are Wise In Proportion, Not To Their Experience But To Their Capacity Of Experience".

As, we all aware with the fact that the Income Tax Bar Association Karachi is the largest tax bar in the country. The primary focus of the bar is to equip the Bar members with adequate knowledge which will help to enhance the efficiency of the members. To educate the members, the Bar holds seminars frequently.

The Bar has an honor to do its best to facilitate members in keeping an eye on the changes taking place in the profession. Being a newly elected President, it is indeed a privilege for me and my team to serve the Honorable Bar and its members in a manner that they always remain abreast of latest and update information about the profession.

To achieve the above objective, it is the Bars' tradition to place before their members, news and views which contains the information about Circulars, SRO's/Notifications and the important decision of Learned Income Tax Appellate Tribunal, Honorable High Courts and Supreme Court. Members are informed that due to some unexpected reasons news and views were held pending from the second quarter of 2006. In this connection, we have taken steps initially to overcome the delay for the year 2006, and then Insha Allah, soon be able to mitigate the deficiency gradually.

I, by taking the opportunity and responsibility, assure you that such arrangements will be made in future which will completely eliminate such delays Insha Allah.

I would like to take this opportunity to congratulate the Convener Mr. Muhammad Rehan Siddiqui and his team for this publication in such a short time. I would like to place on record my special thanks to Mr. Muhammad Zubair, the General Secretary, whose contribution has facilitated the early issuance.

I, on behalf of my Committee Members thank all the members of the Bar who reposed confidence on us. This confidence will be a driving force for us to serve the Bar and its members in a better way with best of our abilities and efforts.

Pakistan Zindabad

Najam Irshad Khan

FROM THE DESK OF THE CONVENER

On behalf of news and views committee of the Bar, I feel pleasure to deliver my annotations through this publication. I am very grateful to the members of the Bar for conferring me a rare opportunity to serve this prestigious Bar. I would like to express my commitment to fulfilling their confidence which they have reposed upon me by utmost possible level on my side.

We feel pride that news and views team consists of intelligent, hard working and very competent and talented professionals with brighter academic background. 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 people.

The current issue of the news and views covers the circulars, SRO's/notification and important judgments of the Learned Income Tax Appellate Tribunal, Honorable High Courts and Supreme Court upto December 31, 2006. We regretfully accept that due to some undesirable reasons, the News and Views was not published since March 2006. Therefore, in this issue we have made it possible to cover the period of 2006. Gradually Inshallah we will very soon be able to overcome the backlog and continue with the current period.

I am indebted to my Learned Committee members who actually did this task and all the credit and appreciation goes to them as they are the finest in knowledge, experience and expertise. This would not have been possible without the guidance of our President, General Secretary and the Convener of the last year Committee, whose experience and vision, inspired and motivated us to convert this challenge into a reality.

I am 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. I also assure you of our commitment for continuity of this informative publication.

Warm Regards,

Mohammad Rehan Siddiqui

IMPORTANT CIRCULARS & NOTIFICATION / SROs

DIRECT TAX

CIRCULAR / SROs / NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
C.No.4(1)/TP/2006-SRO 05-06-2006	List of 15 Notifications issued under section 53(2) of the Income Tax Ordinance, 2001 ("Ordinance") during financial year 2005-06 placed before the National Assembly for approval	344
C.No.1(6) WHT/2006 27-06-2006	Explanation of changes in withholding tax provisions through the Finance Act, 2006	345
Circular No.1 of 2006 01-07-2006	Explanation of important amendments brought in the Income Tax Ordinance, 2001 by the Finance Act, 2006	346
Circular No.2 of 2006 01-07-2006	Explanation of important amendments relating to Capital Value Tax by the Finance Act, 2006	347
Circular No.3 of 2006 07-2006	Explanation and computation of income tax payable by Salaried taxpayers for the tax year 2007 and deduction of withholding tax from salary effective 01 st July, 2006 after the Finance Act, 2006	348
Circular No.F-4(1)/ITP/2006- CVT 14-09-2006	Clarification of Circular No.2 of 2006 dated 01-07-2006 for levy of Capital Value Tax	349
SRO 379(I)/2006 18-04-2006	Prescribed format of Notice of Demand for payment of tax under section 137(2) of the Income Tax Ordinance, 2001 ("Ordinance") substituted	350
SRO 516(I)/2006 01-06-2006	Certain amendments made in Rules 2, 73 and 74 of the Income Tax Rules, 2002 in respect of Electronic filing of Income Tax Returns, etc	351
SRO 619(I)/2006 08-06-2006	Rules 19A and 19B inserted in the Income Tax Rules, 2002 prescribing procedure and formats of application and certificate, etc., in respect of Certificate of Residence in Pakistan and Certificate of Payment of tax in Pakistan	352
SRO 669(I)/2006 28-06-2006	Amendments in Income Tax Rules, 2002 concerning quarterly statements regarding Transfer of Property and for Sale of Motor Vehicles with certain amendments in the formats of Monthly statements	353
SRO 667(I)/2006 27-06-2006	Certain amendments made in Rules 212 to 217 of the Income Tax Rules, 2002 in regard to approval under section 2(36) of the Ordinance for a "Non-Profit Organization" (NPO) which amendments inter-alia, include that the approval granted u/s.2(36) as NPO will remain in force for the subsequent years unless withdrawn under Rule 217	354
SRO 668(I)/2006 27-06-2006	Amendments made in Rules 3 to 7 of the Income Tax Rules, 2002 whereby value of all perquisites, allowances and benefits provided by the employer to the employee, shall be included in the salary of the employee with effect from 01 st July 2006	355
SRO 612(I)/2006 28-06-2006	In the prescribed format of Notice of demand u/s.137(2) of the Ordinance, the maximum time limit for payment of tax of 15 days substituted by 30 days	356
SRO714(I)/2006 05-07-2006	Rule 19AA inserted in the Income Tax Rules, 2002 for application for initiation of Mutual Agreement Procedure and Rule 19B for action by the Competent Authority of Pakistan on an Application received through the Competent Authority.	357

CIRCULAR / SROs / NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
SRO 774(I)/2006 29-07-2006	Amendments in Rules 211 and 213 of the Income Tax Rules, 2002 regarding audit of accounts and investment of Surplus by NPOs	358
SRO 761(I)/2006 26-07-2006	Amendments made in format of Income Tax Returns by amending Part I to VI of the Second Schedule of Income Tax Rules, 2002.	359
SRO 790(I)/2006 03-08-2006	Formats of Monthly statement of collection or deduction of tax u/s.165 of the Ordinance prescribed	360
SRO 880(I)/2006 25-08-2006	Rule 220A inserted in the Income Tax Rules, 2002 regarding procedure for approval of a "Non-Profit Organization" by RCIT under clause (58)(3) of Part-I of the Second Schedule	361
SRO 794(I)/2006 05-08-2006	Withholding tax rate in respect of payment on account of transportation of goods through goods transport vehicles reduced to 2% of the gross amount with effect from 01-07-2006 by insertion of clause (27) in Part-II of the Second Schedule	362
SRO 863(I)/2006 22-08-2006	Withholding tax provisions u/s.148 on imports made inapplicable on goods temporarily imported into Pakistan for subsequent exportation and which are exempt from customs duty and sales-tax under Notification No.SRO 1065(I)/2005 dated 20-10-2005	363
SRO 864(I)/2006 22-08-2006	Income of WAPDA Sukuk Company Limited exempted by insertion of sub-clause (xvii) in Clause (66) of Part-I of Second Schedule	364
SRO 884(I)/2006 28-08-2006	Minimum tax liability @0.5% u/s.113 of the Ordinance made inapplicable for WAPDA Sukuk Company Limited	365
SRO 885(I)/2006 29-08-2006	Clause (62) inserted in Part-IV of the Second Schedule whereby provisions of section 97 dealing with treatment of disposal of assets between wholly-owned companies made inapplicable in case of transfer of assets on amalgamation of companies or their businesses or acquisition of shares, on fulfillment of qualifying conditions	366
SRO 1038(I)/2006 09-10-2006	International Irrigation Management Institute exempted from tax under Clause (57)(B)(xi) of Part-I of Second Schedule	367
SRO 1121(I)/2006 06-11-2006	In Part-XII of the Second Schedule to the Income Tax Rules, 2002 statement regarding transfer of properties in urban area made applicable to transfer of immoveable property including "agricultural land"	368
SRO 1088(I)/2006 31-10-2006	Clause (63B) inserted in Part-I of the Second Schedule whereby any amount donated or paid, as sponsorship in connection with the holding of 2nd session of the World Islamic Economic Forum, 2006 exempted from tax	369
SRO 1118(I)/2006 06-11-2006	Fully dedicated CNG buses (CBU) classified under PCT heading 8702.1090 and 8702.9090 and agricultural tractors classified under PCT heading 8701.9020 subjected to reduced rate of tax withholding under section 148 of the Ordinance	370
SRO 1119(I)/2006 01-11-2006	Clause (4) of Part-I of the Second Schedule substituted in regard to exemption of salary income of a Pakistani seafarer on fulfillment of qualifying conditions	371

CIRCULAR / SROs / NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
SRO 1205(I)/2006 06-12-2006	Clause (42) inserted in Part-IV of the Second Schedule making the provisions of section 153(6) inapplicable in respect of payments received by a person for supply of relief goods for earthquake victims against funds from the President Relief Fund for Earthquake Victims, 2005, or any other such sources of the Government or the purchases made by approved voluntary Non-Profit Organizations or welfare bodies for the aforesaid purpose	372
SRO 1213(I)/2006 01-12-2006	Unified Reward Rules for employees of CBR and Registered Informers, 2006 issued in suppression of all previous rules/ orders/ instructions earlier issued	373
SRO 1268(I)/2006 21-12-2006	Sub-clause (xxi) inserted in Clause (56) making the provisions of section 148 of the Ordinance for deduction of tax on imports inapplicable on capital goods imported by a manufacturer whose sales comprises of 100% exports and who produces a certificate from the Commissioner to the effect that imported capital goods shall be installed in his own industrial undertaking and exclusively used for production of goods to be exported	374

INDIRECT TAX

CIRCULAR / SROs / NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
Sales Tax Circular No.1/2006 21-12-2006	Condonation of Fine / Penalty and Default Surcharge for late filing of returns electronically under SRO 1184 & 1185(I)/2005 dated 01.12.2005 for tax period November and December, 2005 due to non-availability of digital certificate.	375
Sales Tax Circular No.2/2006	Clarification regarding non-chargeability of sales-tax on General Repair Works Contract and also on goods consumed during the execution of the repair services on fulfillment of specified conditions.	376
Sales Tax Circular No.3/2006	Assessable value of imported and locally manufactured sugar fixed at US\$440 PMT and Rs.29 per kg respectively for sales tax liability, regardless of the actual value of supply of locally produced sugar or the actual import value of imported sugar.	377
Sales Tax Circular No.4/2006	Instructions issued for implementation of SRO 645(I)/2006 dated 21.06.2006 relating to Pesticide and Active Ingredients thereof.	378
Sales Tax Circular No.5/2006	Simplified Annexures "B" and "C" issued for Commercial Importers exclusively importing zero-rated items.	379
Sales Tax General Order No.1 of 2006	Procedure for payment of Sales Tax against advance receipts prescribed.	380
Sales Tax General Order No.2 of 2006	Permissibility to affix retail price by means of stamping or pasting stickers printed with retail price calculated in accordance with S.2(27) on stocks of items, which are now subject to sales tax on retail price under Third Schedule on fulfillment of qualifying conditions.	381

CIRCULAR / SROs / NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
Sales Tax General Order No.3 of 2006	Instructions issued in respect of issues relating to Steel Sector arising from SRO 678(I)/2006 dated 30.06.2006 fixing value addition per ton.	382
C.No.4/57-STB/97	Clarification regarding inclusion of Canola seed in expression "Rapeseed" used in the SRO notifications 68 and 69(I)/2006 both dated 28.01.2006.	383
C.No.5/8-STB2005	Directive to Collectors to release plant, machinery, equipment and parts thereof (except consumer durables and office machines) at zero-percent Sales-Tax under SRO70(I)/2006 dated 28.01.2006 regardless of the rate of customs duty chargeable thereon. Accordingly indicative lists relating to SRO 530(I)/2005 dated 06.06.2005 circulated vide Board's letter dated 15.12.2005 and 28.12.2005 are no longer applicable.	384
C.No.5/19-STB/2005	Directive for processing of all pending Refund claims relating to pre-budget non-zero-rated regime, which was to be refunded by 30.09.2005, which was the cut-off date for exporting of goods acquired upto 05.06.2005.	385
C.No.5/8-STB/2005	Directives to Collector to scrutinize all import clearances made from 06.06.2005 onwards under Form-S / import authorization certificates to find out whether sales tax has been collected on imported parts of consumer durables.	386
C.No.5/8-STB/2005	Negative List of tariff headings not covered under SRO 530(I)/2006 dated 06.06.2005 and SRO 70(I)/2006 dated 28.02.2006 issued for ensuring uniformity of application throughout the country.	387
C.No.1(3) CEB/04	Procedure and format issued for issuance of Sales Tax Invoices by Manufacturers of Edible Oil / Ghee.	388
C.No.1/1-STB/2006	Sales Tax and Federal Excise Budget Instructions 2006-07.	389
C.No.3(17)ST-L&P/2000	Rapid Data Feeding Counters created for avoiding delay in processing of refund of packing material and other tax paid inputs used in the manufacture of zero-rated goods.	390
C.No.1/1-STB/2006	Clarification regarding Minimum Value Addition on goods mentioned in the Third Schedule, imported by Commercial Importers.	391
C.No.5/23-STB/2005	Finger Print Capture Devices (PCT 8471.6000) excluded from negative list of PCT headings issued vide CBR's letter dated 03.04.2006.	392
C.No.5/10-STB/2005	Clarified that Surgical Gloves (PCT 4015.1100) and Blood Collecting Packs with blood transfusion sets (PCT 9018.3990) are zero-rated under SRO 525(I)/2006 dated 05.06.2006.	393
Sales Tax Circular No.6 of 2006	List of categories of persons specified for allowing waiver for submission of Monthly Invoice Summary regarding sale / purchase.	394
Sales Tax Circular No.7 of 2006	Two further categories, namely, (i) Registered persons operating exclusively as steel melters; and (ii) Registered persons relating to computer industry including computer retailers included in the list of persons not required to file Monthly Invoice Summary regarding sale / purchase.	395
C.No.5/8-STB/2005	Exclusion of "Air Screw Compressor (PCT heading 8414.8020)" from the list of Tariff headings not covered under SRO 530(I)/2005 dated 06.06.2005.	396

CIRCULAR / SROs / NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
SRO 1213(I)/2006	Unified Reward Rules for employees of CBR and Registered Informers, 2006 issued.	397
SRO 1260(I)/2006	Appointment of Specified Chartered Accountants, Firms of Chartered Accountants, Cost and Management Accountants and Firms of Cost and Management Accountants, as auditors for conducting special audit of the records of registered persons, as may be assigned to them by the respective Collectorate from time to time.	398
SRO 1270(I)/2006	Zero-rating allowed on import of local supply of specified (1) Dedicated CNG buses and all other buses meant for transportation of 40 or more passengers, whether in CBU or CKD conditions falling under heading 8702 and (2) Purpose built Taxis, whether in CBU or CKD conditions which are built on girder chassis and having specified features and falling under heading 8703.3226 & 8703.3227.	399

CORPORATE

CIRCULAR / SROs / NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
Circular No.5 of 2006	Re-organization of Divisions and Departments of SECP in suppression of Circular No.23 of 2003 and all other circulars issued in this respect.	400
Circular No.6 of 2006	Maximum management expense limits prescribed under S.22(9) and S.23(9) of the Insurance Ordinance, 2000 for life insurers, which shall start in phases with the application for the year 2007 and shall be fully implemented with application to the year 2012 and later.	401
Circular No.7 of 2006	Procedure and time limit prescribed for NBFCs for applying for renewal of License under Rule-5 of NBFC Rules and documents specified to the accompanied with application.	402
Circular No.8 of 2006	NBFCs advised to adhere to SBPs regulations on foreign currency for issuance of Foreign Currency Certificate of Deposits (CODs) and Certificate of Investments (COIs) and operate within the parameters of SBPs restricted license policy. Accordingly SECP's Circular No.6 of 27.06.2005 withdrawn with immediate effect.	403
Circular No.9 of 2006	Conditions specified for compliance by Promoters / Majority Shareholders of NBFCs having shares (whether subscribed or allotted or issued as right or bonus shares, etc).	404
Circular No.10 of 2006	Conditions specified for compliance by Promoters / Majority Shareholders of Modaraba Management Companies.	405
Circular No.11 of 2006	Enhancement in the upper limit on creation and building-up of Reserves by <i>Modarabas</i> in terms of sub-regulation 2(a) of Part-III of the Prudential Regulations for Modarabas.	406
Circular No.12 of 2006	Directives issued to NBFCs in regard to Right Issues and Underwriting by Collective Investment Schemes.	407

CIRCULAR / SROs / NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
Circular No.14 of 2006	All complaints of insurance policy holders handed over by SECP to the Federal Insurance Ombudsman Office on appointment of Mr. Justice (R) Syed Ali Aslam Jafri and activation of his office at Karachi.	408
Circular No.15 of 2006	Federal Government in consultation with Chief Justices of Lahore / Sind / Peshawar / Baluchistan High Courts has conferred powers of Insurance Tribunal in each province on the District & Sessions Judges.	409
Circular No.16 of 2006	Treatment of Bank Deposit and premium receivable from a related party, in case of Banking Company specified.	410
Circular No.17 of 2006	Requirement of Reinsurance Treaty Arrangements for the year 2007 prescribed.	411
SRO 449(I)/2006	Exemption from application of clause (6) of Part I of the Fourth Schedule of Companies Ordinance till 30.06.2006 to listed companies and its subsidiaries.	412
SRO 677(I)/2006	Further extension upto 30.09.2006 of above exemption.	413
SRO 1025(I)/2006	Further extension upto 30.12.2006 of above exemption.	414
SRO 769(I)/2006 AND final by SRO 10(I)2007	Draft amendments earlier proposed in the Companies (General Provisions and Forms) Rules, 1985, in regard to Mode of submission of Electronic documents to the SECP or to the Registrar by insertion of Rule 9A to 9G and then final SRO issued.	415
SRO 959(I)/2006	Draft of certain amendments in the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003.	416
SRO 1228(I)/2006	International Financial Reporting Standards (IFRSs) 2, 3, 5 and 6 issued by the International Accounting Standards Board to be followed in regard to the accounts and preparation of balance sheets and profit & loss accounts of listed companies, with power to Commissioner to grant an exemption to any company / class of company, if it is in the public interest.	417

SYNOPSIS OF IMPORTANT CASE LAW

DIRECT TAX

CITATION	ISSUES INVOLVED
2006 PTD 2119 Lahore High Court	Sec 22 of the Income Tax Ordinance, 1979 The Hon'ble High Court has held that amount received as award does not fall within the mischief of Section 22(c) of the repealed Ordinance
2006 PTD 2227 = (2006) 94 Tax 341 Sindh High Court	Section 13 of the Income Tax Ordinance, 1979 View regarding requirement of seeking two approvals under section 13 of the repealed Ordinance prior to the amendment made in 1992 reaffirmed
(2006) 95 Tax 17 Sindh High Court	Sections 23 and 24 of the Income Tax Ordinance, 1979 Admissibility of expenditure on account of infraction of law explained. It has been held that where amount is paid on account of infraction of law the same would not be allowable as an business expenditure – Exceptions stated Note: Members are advised to read the complete judgment for better understanding of the issue
(2006) 94 TAX 79 Lahore High Court	Section 80DD of the ITO, 1979 and Section 4 of the WWF Ordinance, 1971 The Honourable Lahore High Court has held that in the case covered under Section 80DD, the charge of WWF is not applicable
2006 PTD 2502 Supreme Court of Pakistan	Self Assessment Scheme of AY 2002-2003 was proper Section 59 of the Income Tax Ordinance, 1979 It may be recalled that selection of cases under Self Assessment Scheme for the assessment year 2002-2003 was held to be not proper by the Hon'ble Lahore High Court in the case reported as 2003 PTD 1821. The Hon'ble Supreme Court has reversed the judgment of the Hon'ble High Court holding that the selection was proper. Note: Members are advised to read the complete judgment for better understanding of the issue
(2006) 95 TAX 3 Supreme Court of Pakistan	Amounts received under Golden Hand Shake schemes are taxable Section 16 of the Income Tax Ordinance, 1979 The apex Court has held that payments received by employees under Golden Hand Shake schemes are chargeable to income tax under the head Salary
(2006) 95 Tax 41 Sindh High Court	Effective date for applicability of Rules Rule 20 of the Income Tax Rules, 1982 The Hon'ble High Court has held that Rule 20 of the Income Tax Rules, 1982 would apply effective from the assessment year 1982-83. In coming to the conclusion the Hon'ble Court observed that in terms of the charging section 9 of the repealed Ordinance the law in vogue in the assessment year will govern the assessment notwithstanding the ending of the income year. The income of previous year is assessable in the subsequent assessment year. It is well-settled that the assessment is to be made in accordance with the law in force at the beginning of the assessment year in respect of the income years preceding to the said assessment year. In the instant case, the income year of the petitioner ended on 31-12-1981 and, accordingly, assessment year would be 1982-83 i.e. from 01-7-1982 to 30-6-1983. Hence the aforesaid Rule was not applicable retrospectively
2006 PTD 2854 Sindh High Court	Sections 80D and 156 of the Income Tax Ordinance, 1979 It may be recalled that exemption from the charge of tax under section 80D was granted by the Hon'ble Supreme Court in its judgment re: Ellahi Cotton Mills PLD 1997 582 SC to industries whose cases were covered by SRO 1283(I)/99 dated 31-

CITATION
ISSUES INVOLVED

12-1990 (Clauses 118C to 118E of the Second Schedule) which were mentioned in the Schedule to section 6 of the Protection of Economic Reforms Act, 1992. The apex Court held that the provisions of the Act would prevail over section 80D of the repealed Ordinance.

Based on the aforesaid judgment the taxpayer sought relief from the levy of tax under Section 80D as its case fell in one of above mentioned clauses. The said relief was sought by filing a rectification application under Section 156 of the Ordinance although the taxpayer paid the tax under section 80D and did not challenge the same in appeals

The rectification application was rejected on the ground that CBR and Law & Justice Division have opined that since the taxpayer was not a party before the Hon'ble Supreme court in PLD 1997 582, relief cannot be granted. It was also rejected on the ground that the assessment has attained finality owing to non-filing of appeal against the levy of tax under section 80D and therefore, could not be disturbed by way of application filed under section 156

The taxpayer assailed the said action before the CIT (Appeals), where the appeal was rejected. Second appeal was filed before the learned Tribunal which allowed the relief. See 1998 PTD 3866 = (1998) 78 Tax 343 Trib

The Department filed appeals before the Hon'ble High Court against the decision of the learned Tribunal. The Hon'ble High Court has concurred with the judgment of the learned Tribunal. It has been observed that an order passed by the Assessing Officer achieves finality only after the appellate and other proceedings by which the order can be disturbed, modified or amended have been resorted to or have become time barred. Therefore, till the period of limitation provided under section 156 during which the rectification can be made has not expired, the proceedings cannot be said past and closed. It was further observed that it is well settled that government departments including the Law & Justice Division and CBR do not figure in the hierarchy of the forums whose opinion or interpretation of law can be considered binding and therefore, their opinions are of no effect

(2006) 95 Tax 147
Lahore High Court

Sections 13(1)(a) & (aa) of the Income Tax Ordinance, 1979 are different

The Hon'ble High Court has held that consequences of addition u/s 13(1)(a) when compared to addition u/s 13(1)(aa) were different. The application of section 13(1)(aa) entails penal consequences under section 111 of the repealed Ordinance, whilst no such liability flows from action under section 13(1)(a). The addition was made on account of cash credits appearing in the accounts of the respondent. Unexplained credits are actionable under section 13(1)(a) and not under section 13(1)(aa) of the repealed Ordinance.

It is also re-affirmed that it is a settled principle of interpreting a statute that out of two interpretations, one which is favorable to the taxpayer is to be adopted

2006 PTD 2590
Sindh High Court

Scope of Rectification; Section 156 of the Income Tax Ordinance, 1979

In this case the department sought rectification of the assessment on the basis of judgment pronounced subsequent to the original assessment and income was worked out by prorating the expenditures.

The same was challenged before the CIT-Appeals and the learned Tribunal without any success. Thereafter an application u/s 136 was filed before the Hon'ble High Court. While accepting the contention, the Hon'ble Court examined various cases and held that if an assessment order is made in conformity with the prevailing view in respect of a legal position and subsequently the legal view is changed on account of interpretation of law by the appellate or superior Court, then it cannot be stated to be a case of mistake apparent from record as has been envisaged under section 156 of the repealed Ordinance. It cannot be held that it would not be an assessment order resulting from failure to apply the indisputable state of law.

CITATION
ISSUES INVOLVED

However, if the prevailing views of law on account of appellate decision or interpretation by the superior Court was not applied/ acted upon by the Assessing Officer deliberately or on account of ignorance or as a result of inadvertence, it would be a case of mistake apparent on record. The same, therefore, can be rectified by the Assessing Officer under section 156 of the repealed Ordinance.

The High Court has further held that in the first situation, the wrong committed would not be treated mistake apparent from record but an error of judgment which could be rectified in exercise of revisional jurisdiction vested under section 66A of the Income Tax Ordinance, 1979 whilst in the second situation, it would be a mistake apparent from record amenable to correction under section 156 of the Ordinance

INDIRECT TAX

CITATION
SECTION
ISSUES INVOLVED

2006 PTD 2461 High Court Lahore

Sec. 33, 34 & 47 of the Sales Tax Act, 1990

In this case, during the audit, it transpired that some treasury challans presented for audit as proof of payment of the monthly fixed amount of sales tax contained overwriting, manipulation and alteration in the figures appearing on the original treasury challans. Factum of manipulation was verified from National Bank of Pakistan which confirmed the manipulation. Consequently a Show Cause Notice was issued and F.I.R. was lodged in the competent Court of law. Before the adjudicating authority, the taxpayer pleaded innocence on the ground that their Munshi had committed act of fraud without their knowledge. The taxpayer was directed to deposit defrauded amount of sales tax along with additional tax and surcharge which was calculated up to the date of its actual deposit as stipulated under Section 34 of Sales Tax Act. A penalty was also imposed under Section 32(2) of the Sales Tax Act. The taxpayer Company being aggrieved and dissatisfied of the order in original filed Appeal before the learned Collector Appeals, who find no merits in the Appeal and registered the same by up holding the order in original. The Appeal before the learned Tribunal also failed. In Appeal before the Hon'ble High Court of Lahore, the taxpayer pleaded that forgery was committed by the MUNSHI and as soon as the fraud was detected by Sales Tax Officer, the taxpayer Company deposited the avoided amount. The imposition of penalty was contested on similar ground. The Hon'ble High Court has observed that the plea with regard to innocence cannot be accepted as the law stipulated under Section 68 of the Sales Tax Act prescribes that where any person is expressly or impliedly authorized by registered person to be an Agent for all or any of the purposes of act, the person would be responsible for the act done by the Agent. It was, therefore, held that taxpayer cannot be observed of responsibility stipulated by the law as the case is matter of forgery and manipulation in the tax regarding the penalty imposed washed not to be harassed and seems to be reasonable and fair. The imposition of additional tax in terms of Section 34 was held to be directory in nature, therefore, prayer for its waiver was held not to be maintainable.

2006 PTD 2558 High Court of Sindh

Sec 47 of the Sales Tax Act, 1990

In this case, the learned Customs, Excise and Sales Tax Appellate Tribunal granted relief of amnesty scheme to the taxpayer against which an appeal was preferred by the Department. The contention raised by the Department was that prior to amnesty, as a result of scrutiny and audit by the Sales Tax Officer, alleged tax fraud was detected and therefore, Show Cause Notices were issued. On the other hand, the taxpayer took plea that they have availed the amnesty scheme introduced through SRO.5000(I)/2003 dated 07.6.2003. However, the order in original was assed which was contested by the taxpayer before the learned Tribunal, which allowed the benefit of amnesty. The contention of the Department was that much prior to the amnesty scheme, observation was forwarded to the taxpayer, however, it was admitted position that show cause notice was issued much after the date of amnesty scheme. The audit observation were not furnished before the Hon'ble High Court. On the other hand, the taxpayer pleaded that if the audit observation were available with the Department prior to the amnesty

scheme, the Sales Tax Officer could have refused the request for giving benefit of amnesty scheme, which was not done. As such, it was submitted that availing of amnesty scheme by the taxpayer in pursuance of the scheme with the permission of tax officer showed that neither any audit observation was available with the Sales Tax Officer nor any case of tax fraud framed, otherwise they would not have allowed the taxpayer to avail the amnesty scheme. The Hon'ble High Court confirmed the action of learned Tribunal after examining the above facts. In this case, in addition to above, it was observed that the Appeals were not maintainable in law because same were filed on 23.9.2004 in the name of Collector Sales Tax, Central Excise, but actually the Assistant Collector (Law) Enforcement, Sales Tax and Central Excise, Karachi signed the Memo of Appeal and the verification. Subsequently, the Department realized that the Appeal was not maintainable, therefore, an application was filed by the Collector on 05.3.2005 seeking permission to sign the Memo of Appeal contending that it was inadvertently signed by the subordinate officials of the Collector. The permission was granted on 13.4.2005 and the Memo of Appeals were signed by the Collector. The Hon'ble High Court on the basis of similar issue in respect of Appeals arising under the Customs Act and Central Excise Act (see SCMR 129) held that Appeals were not maintainable in law and dismissed it on merits as well as on the ground of maintainability. In 2006 SCMR 129 Hon'ble Supreme Court has held that Appeal could be filed by Collector only and none else. It was further held that as Appeal purported to have been filed by the Collector as the nomenclature of the Appellate appears as Collector of Customs and not signed by him and instead of sign or verified either by Deputy Collector or Assistant Collector would be deemed not to have been filed in accordance with law. It was further held that even if the Memo Appeals were signed by the Collector after expiry of period of limitation, the Appeals would be barred by time.

2006 PTD 2683 Supreme Court of Pakistan

Sec 2, 6, '34 and Rules to the Sales Tax Act, 1990

In this case, the Appellant submitted tax returns and pay orders in respect of tax period in terms of Section 2(9) and (43) of the Sales Tax Act 1990 on or before 20th of the respective month accompanying Bank instrument for the payment of tax. Facts of the case show that after clearance, the returns were accepted after 20th May beyond the due date of 20th of the month. The appellant /taxpayer was informed that as the tax has not been deposited on or before stipulated date, therefore, under Rule 5(4) of the filing of monthly return Rules 1996, the Appellate was liable to pay additional tax under Section 34 of the Sales Tax Act 1990 on the account of delay in payment. The order in original was imposing additional tax liability which was challenged in a Constitutional Petition, which was dismissed by the Hon'ble High Court, against which, the taxpayer filed Civil Appeal before the Hon'ble Supreme Court of Pakistan. The Hon'ble Supreme Court of Pakistan after considering the facts and statutory provisions of Rule 5(4) held that the additional tax was correctly imposed. It will be advantageous to reproduce the observation of Hon'ble Supreme Court of Pakistan, which reads as under :

"7. At this juncture, it may not be out of context to note that section 6(2) of the Act, 1990 provides that the tax in respect of taxable supplies made in Pakistan during the tax period shall be paid by the registered person at the time of filing the return in respect of that period under Chapter-V. This provision of law makes it abundantly clear that tax has to be paid along with return on or before 20th of each month being due date, in the way/mode/manner and at the time specified, meaning thereby that by means of any recognized mode, tax is required to be deposited and must be received by Government treasury on or before the 20th of the month and if the bank instrument has not been cleared on the said date then it would be deemed that the return has been filed and accepted on the date when the tax was actually received."

2006 PTD 2821

Sec 7 and 8 of the Sales Tax Act, 1990

In this case, plea of taxpayer was that input tax on the purchase of diesel for running its power generator was adjustable claiming that the same was used for production/manufacture of taxable goods and supplies. The Hon'ble Court after examining Section 7 & 8 and relevant SRO's, it was held that the said adjustment was not applicable to the taxpayer and the disallowance of input tax was rightly disallowed.