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## IMPORTANT CIRCULARS AND NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
<b>INCOME TAX</b>			
Circular No.19	01.09.2004	Clarified that all persons selling goods to general public for consumption, including manufacturers / dealers, distributors having turnover upto Rs.5 million, are entitled to pay tax @ 0.75% on turnover and avail the benefit provisions of S. 113A.	83
Circular No. 20	04.09.2004	Alternate Dispute Resolution Committees for different cities notified as provided in S. 134A(2).	84
Circular No. 21	19.11.2004	Partial modification of Circular No. 20 of 2004 dated 04.09.2004, Alternate Dispute Resolution Committees reconstituted.	85
SRO 748(I)/2004	30.08.2004	Income Tax Rule 231C inserted, in respect of working of Alternate Dispute Resolution as provided in S. 134A of Income Tax Ordinance, 2001.	86
SRO 763(I)/2004	03.09.2004	Draft amendments in Income Tax Rules, regarding filing of Monthly/Quarterly/ Annual Statements, by certain Payers/ Deductors/Collectors.	87
SRO 769(I)/2004	06.09.2004	Withholding Tax u/s. 148 to be collected at reduced rate of 2% on import of polyester yarn/fiber of all types.	88
SRO 774(I)/2004	07.09.2004	Approval granted to M/s. Bestway foundation, Islamabad, for purposes of clause (58) (3) of Part-I of the Second Schedule, for the Tax Year 2004.	89
SRO 833(I)/2004	29.09.2004	No withholding tax u/s. 148 shall be collected on wheat imported by TCP in pursuance of decision of federal Cabinet's Economic Coordination committee (ECC) dated 02.07.2004, by insertion of Clause.(53) in Part-IV of Second Schedule.	90
SRO 936(I)/2004	24.11.2004	Final amendments in Income Tax Rules, regarding filing of Monthly/Quarterly/ Annual Statements, by certain payers/ deductors/collectors.	91
SRO 36(I)/2005	07.01.2005	By substitution of clause (13C) of Part II of Second Schedule, in respect of manufacturers of cooking oil or vegetable ghee or both, the rate of income-tax on purchase of locally produced edible oil shall be 1% of the purchase price.	92
SRO 37(I)/2005	07.01.2005	Withholding Tax @ 1% shall be collected u/s. 148, in respect of potassic fertilizers imported in pursuance of ECC's decision dated 09.12.2004, by insertion of cl. (13E) in Part II of Second Schedule.	93
SRO 38(I)/2005	07.01.2005	Clause (13F) inserted in Part II of Second Schedule, withholding tax u/s. 148 shall be collected @ 2% on import of blankets (acrylic) and acrylic yarn of 32 to 40 metric count, if imported for self consumption by blanket manufactured.	94

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SRO (I)/2005	02.02.2005	Draft notification issued for omission of Sub-rule (11) of Rule 231C, regarding payment of remuneration covering traveling allowances and daily allowance to the Members of the Alternate Dispute Resolution Committee, other than Public Servant.	95
<b>SALES TAX</b>			
Sales Tax General Order No. 4 of 2004	04.09.2004	Certain amendments made in Sales Tax General Order No. 3/2004.	96
Sales Tax Order	11.09.2004	Various Committees appointed by CBR in specified collectorates, to examine the cases of refunds claimed on invoices of black listed persons.	97
C.No.1(17)CEB/96-pt	25.10.2004	Clarified that Internet Service Providers (ISPs) and Data Network Service Providers (DNOPs) are authorized to use Data communication only, they are not VSAT Service Providers, as such, rather they are data operators. Hence the users of VSAT Terminals, using VSAT for purposes of extending Internet or Data communication services only, are not leviable to central excise duty. However, any VSAT operator providing its media to operators/service providers would be liable to CED under SRO 333(I)/2002 dated 15.06.2002.	98
C.No. 1(115) /STJ/2004	04.12.2004	Directives issued to take necessary action on the basis of decision take in Collectors Conference that in view of the judgments of Superior Courts in various cases, involving the issue of "Out of Tax Period Adjustment of Input Tax", the Collectors should withdraw all such cases pending at different forums.	99
SRO 776(I)/2004	10.09.2004	Special Procedure for Collection and Payment of Sales Tax from the Oil Marketing Companies.	100
SRO 780(I)/2004	13.09.2004	Jurisdiction of the Collector, Collectorate of Customs, Sales Tax and Central Excise (Adjudication) and areas relating to their jurisdiction specified.	101
SRO 858(I)/2004	18.10.2004	As a special case, exemption allowed from whole of additional tax and penalty chargeable from the persons registered as International Freight Forwarders, due to late filing of Returns of the months of June, August, and September 2004, subject to fulfillment of qualifying conditions.	102
SRO 907(I)/2004	08.11.2004	Revision of jurisdiction and powers of adjudication of the Sales Tax Officers (Collector, Additional Collector and Deputy Collector).	103
SRO 1009(I)/2004	30.12.2004	Amendments made in Notification dated 25.03.2003 relating to Alternate Dispute Resolution Committee.	104
SRO 02(I)/2005	01.01.2005	Certain amendments made in SRO 350(I)/2002 dated	105

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		15.06.2002 under powers vested in Rule 6 (1) of the Registration, Voluntary Registration and De-Registration Rules, 1996.	
SRO 07(I)/2005	01.01.2005	Appointment of Collectors to act as Collector (Appeals) for deciding appeals against the orders of the officers below the rank of Additional Collectors, in respect of the specified Organizations.	106
SRO 08(I)/2005	01.01.2005	In suppression of SRO 780(I)/2004 dated 13.09.2004, fresh jurisdiction of the Collector, Collectorate of Customs, Sales Tax and Central Excise (Adjudication) specified in respect of specified cases relating to areas or registered persons, falling under their jurisdiction.	107
SRO 24(I)/2005	08.01.2005	Certain amendments made in Rules 25 and 33 of Sales Tax Rules, 2004.	108
SRO 59(I)/2005 SRO (I)/2005 SRO 76(I)/2005	17.01.2005 27.01.2005 27.01.2005	Certain amendments made in Sales Tax Special Procedures Rules, 2004.	109
SRO 77(I)/2005	27.01.2005	Value of taxable supply of ship for scrapping or breaking (PCT heading 8908-0000) fixed at US\$ 300 per LDT (in equivalent Pak Rupees) for the purposes of assessment of sales-tax chargeable at import stage.	110
SRO 103(I)/2005	03.02.2005	Value of Potassic Fertilizers both Sulphate of Potash (SOP) and Muriate of Potash (MOP), for the purposes of assessment of sales tax chargeable at import stage as well as against local supply of these fertilizers is fixed at Rs.4,610/- per metric ton.	111

### CORPORATE LAWS

Circular No.1 of 2005		Certain Clarifications issued to remove practical difficulties being faced by Listed Companies and their subsidiaries, as a result of revision of the fourth Schedule to the Companies Ordinance, 1984 w.e.f July 05, 2004.	112
SRO 61(I) 2005 SRO 62(I) 2005 SRO 63(I)/2005	17.01.2005 17.01.2005 17.01.2005	Redelegation of powers and functions of the Commission to various Commissioners/ Directors specified.	113

### SYNOPSIS OF IMPORTANT CASE LAW

#### INCOME TAX

CITATION	SECTION	ISSUES INVOLVED
2004 PTD TRIB. 2380	Sec 65, 107AA &156 of	In this case, tax credit U/S 107 AA of the Income Tax Ordinance 1979 was allowed. However, the assessing officer invoked the jurisdiction of

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	Income Tax Ordinance, 1979	rectification to prorate the said credit of tax between presumptive tax and normal income. The learned Tribunal after considering the provision of law has held that tax credit for investment has nothing to do with the presumptive tax regime. Thus, prorating of tax credit U/S 107-AA by an action of re-opening U/S 65 or rectification U/S 156 was unjustified and contrary to the provisions of law.	
2004 PTD 2479 (SC AJ&K)	Sec 66 of the Income Tax Act, 1922	In this case, the Hon'ble Supreme Court of Azad Jamu & Kashmir has observed that expression " Question of Law arising out of such Order" in Section 66 of the Indian Income Tax Act 1922 cannot be restricted only to those questions which have been argued and decided by the Tribunal. Some times a question of law is raised before the Tribunal, but an aspect of that question is neither raised nor decided. In such circumstances, that aspect of the same question can be argued before the High Court. It was further observed that it is well settled that Court of law and a tribunal should apply correct and relevant law on the proposition before it, irrespective of the fact that a party is referred or not.	
2004 PTD TRIB. 2577	Sec 9 & Clause 102A of Second Schedule to the Income Tax Ordinance, 1979 and Sec 10 of Modaraba Companies and Modaraba (Flotation & Control). Ordinance, 1980	<p>In this case, a modaraba claimed exemption under clause 102-A of part-I of the second schedule of Income Tax Ordinance 1979 which was income from investments in bank deposits. The assessing officer rejected exemption on the ground that income carried from investment in bank deposits was interest / riba which was not permissible under the injunction of Islam and assessee had violated section 10 of the Mudaraba companies and Modaraba (Flotation &amp; Control Ordinance 1980).</p> <p>It has been held by the learned Income Tax Appellate Tribunal after examining the provisions of law that assessing officer had no jurisdiction to decide, whether the transactions under taken by the assessee confirms with the provisions of said ordinance, which was the domain of Registrar of Modaraba to decide whether the activities of the Modaraba were in compliance of Shariah or not.</p> <p>It was observed that in the absence of such a decision from the Registrar of Modaraba, it was presumptuous on the part of assessing officer to observe that the activities of the Modaraba were against the injunction of Islam for which he had neither the capacity nor any lawful authority to do so. Exemption was, therefore, allowed.</p> <p>In the same case, the assessing officer had rejected the exemption of the assessee on the ground that it had not distributed 90% of its profit among its certified holders. The connotation of term profit has been examined in this case by the learned tribunal, it has been held that term profit has to be understood and determined in accordance with statutory annual accounts which are prepared and presented in accordance with the provision of section 14 of the Modaraba Ordinance and rule 9 of the Modaraba rules and the same alone is the governing documents on the basis of which distributable profit are to be determined, regardless of the fact whether a particular provision or an expense is not admissible to be deducted for determining taxable income under the Ordinance.</p> <p>It has been observed that what is therefore required to be determined as "Income" liable to tax under the Ordinance has to be seen as distinguished from "Profit". Given the fact that former is determined through a process of assessment of income and tax thereon, while the latter needs to be determined under the Modaraba Ordinance as per statutory annual accounts.</p>	

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2004 PTD TRIB. 2589	Sec 52, 50(2A)	<p>In this case, the assessee paid various parties amounts of account of interest / markup. The assessing officer invoked the provision of Section 52 as he was of the opinion that since assessee has not deducted tax such payments U/S 50 (2A) the assessee was declared an assessee in default.</p> <p>It was argued before the assessing officer that said provision was not applicable as the same was liable for the institutions like banks and such companies which obtained deposits or opened account to pay the profit. The assessing officer did not accept the assessee's explanation.</p> <p>The learned Tribunal after examining the provision of section 50(2A) observed that provision clearly stipulates that payment by way of interest or profit on account or deposit maintained with a Banking Company or other Companies were to attract the deduction of tax at source. It was observed that it is not the case of department when the assessee company had opened an account on the application of the person to whom the interest / markup has been paid. The provision clearly indicates that it is applicable to cases where an account or a deposit has been maintained with a company. Thus, the Hon'ble tribunal held that provision of section 50 (2A) were not applicable to the facts of the case.</p>	
2004 PTD 2852	Sec 13 and 65 of the Income Tax Ordinance, 1979	<p>In this case, the assessee received notice for re-opening the assessment for the assessment year 2001-2002 on the ground that the assessee advanced a sum which did not appear in the assessment record of the assessee. The assessee denied the allegation. However, the assessee challenged the said notice in the Constitutional Petition. The department contested the petition and relied upon a civil suit which was allegedly filed by the petitioner against the gentlemen mentioned in the notice for the sale of the property and recovery of amount.</p> <p>It was further submitted before the Court that in view of the amendment in provision to sub-section (1) of section 13 of the Ordinance, 1979, income chargeable to tax under that section includable in the total income of the income year relevant to the assessment year in which discovery was made. The Hon'ble Court agreed with the contention that the impugned notice is clearly barred by limitation in as much as it seeks to investigate and to treat a sum as undisclosed income, which was allegedly lent as early as on 06-12-1993. Learned counsel is correct in pointing out that the matter pertaining to the assessment year 1993-94 best could be reopened latest by 30-6-2000, in view of proviso to sub section (3) of Section 65 of Ordinance 1979.</p> <p>It has been further held that a transaction, whether admitted or otherwise, which happened earlier to that period could not be brought into any subsequent assessment year after expiry of the statutory period merely for the reason that the current assessment record did not indicate or reflect such transaction. As the impugned notice indicates that the Assessing Officer sought to add and treat the aforesaid sum as income for the year 2001-02 which was not legally permissible. If the interpretation of the Assessing Officer is accepted then the statutory limit provided for the subsection (3) of section 65 of the Ordinance 1979 would be rendered redundant and that can never be the intention of the law. The reference of the Revenue in their reply to the provisions of subsection (1) of section 13 of the Ordinance 1979 is totally misplaced inasmuch as these provisions could only be invoked for the purpose of application of rebate. That provision also cannot directly or indirectly extend the period of five years limitation provided for reopening of an assessment.</p>	

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2004 PTD TRIB. 2786	Sec 56, 65, 80C & 143B of the Income Tax Ordinance, 1979	In this case, a full bench was constituted to decide whether notice u/s 56 can be issued in the case where statement u/s 143-B be has been filed and assessment has been framed u/s 59-A / 80-C of the Income Tax Ordinance 1979. After examining all the aspects of Section 55, 56, 59-A, 65, 143-B, and 80-C, the Hon'ble full bench has come to the conclusion that assessing officer was justified in issuing notice u/s 56 <u>in the facts and circumstances of the case</u>	
2004 PTD TRIB. 2777	Sec 23 and 80 C of the Income Tax Ordinance, 1979	In this case, a very important issue has been decided by the Hon'ble Tribunal where it has been held that finalization of the assessment under presumptive tax regime could not extinguish assessee's claim of un-adjusted depreciation pertaining to the previous years which were statutory allowances which could not be denied to the assessee as long as it was consistent with statutory stipulants.	
2004 PTD 2749	Sec 80 C of the Income Tax Ordinance, 1979	This is also an interesting case where contract executed by a Cricketer of Pakistan Cricket Team with Pakistan Cricket Control Board was treated as contract income / receipt as service income chargeable under normal law on the provisions that rendering of services is outside the scope of section 80C. As against the treatment of the statement filed by the assessee that it is a contractual income chargeable to tax u/s 80C. The Hon'ble Income Tax Appellant Tribunal after examining the contents of the agreement and the provisions of Section 80C and the definition thereof in respect of service held that the income is of a contractual nature and not service, as such action of the department was declared to be illegal.	
2004 PTD 2695		In this case, the Hon'ble Tribunal explained the connotation of the term "Turn Key Contract". Note: Learned members are requested to read the entire Judgment for better under-standing the term "turn key contract".	
2004 PTD 2658	Sec 66A of the Income Tax Ordinance, 1979	In this case, while examining the purview and scope of order passed u/s 66A, the Hon'ble Tribunal has held that inspecting Additional Commissioner has to apply his mind independently.	
2004 PTD 2648	Sec 159 of the Income Tax Ordinance, 1979	In this case, the assessment proceedings were initiated after the dissolution of the company. Learned Tribunal after examining the provisions of the Companies Ordinance, 1984 and section 159 of the Income Tax Ordinance 1979 had held that proceedings initiated and order passed thereof were not legally correct as the only course available to the assessing officer was to approach the Hon'ble High Court with the request to put-up the company back to the register for realization of the Income-tax due like other Government taxes, since the company was not in existence and assessment can not be made on a non-existence person.	
(2005) 91 TAX 1 SC PAK	Sec 236 of the Income Tax Ordinance, 2001	In this case, the Hon'ble High Court of Sindh has dismissed the constitution petition in which vires of Section 236 of the Income Tax Ordinance 2001 was challenged. The Hon'ble High Court had dismissed the petition vide order dated 05-8-2003 now reported in SBLR 2005 Sindh 21. The petitioner further challenged the order before the Hon'ble Supreme Court of Pakistan, which did not found any merits in the case and confirmed	

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		the judgment of Hon'ble High Court and dismissed the petition.	
2005) 91 TAX 1 (TRIB)	Sec 32	In this case, the Hon'ble Tribunal has very minutely dilated upon the issue of rejection of method of accounts and plethora of case law has been cited. Since the decision has digested numerous decision on the subject, the learned members are requested to read the decision for better understanding of the principles laid down by the learned Tribunal.	
2005 PTD (TRIB) 280	Sec 80C	In this case, the learned Tribunal has held that for the purpose of calculation of tax u/s 80C, the value of goods imported should be considered and sales tax paid be ignored	
2005 PTD 259 HIGH COURT KAR	Sec 107 of the Income tax Ordinance, 1979	It will be called that tax credit available to the tax payers was withdrawn by the Finance Act, 1988, which was challenged before the Hon'ble High Court of Sindh in various Constitution Petitions on the ground that originally when the tax payers have made the investment on the basis of incentive u/s 107, the amendment made through Finance Act, 1988 can be applied retrospectively.	
2005 PTD 14	Sec 156 of The Income Tax Ordinance, 1979 and Sec 221 of The Income Tax Ordinance, 2001	The Hon'ble High Court has accepted the plea of the Tax Payers and have in detail discussed the legality of such provisions. The members are requested to read this land mark judgment, to have better understanding of application of Retrospective amendments. In this case, the Hon'ble High Court of Lahore has held that once the period of rectifying an order under Section 156 had already expired, new provision of Section 221 (4) of the Income Tax Ord. 2001 could not be invoked to extend the period of five years. It has been held that on expiry of the prescribed period, under the repealed ordinance, the petitioner acquired a vested right.	
		<b>SALES TAX</b>	
2004 PTD 2928 LAHORE HIGH COURT		In this case, the Hon'ble High Court of Lahore has held that notification or an executive order adversely affecting rights of any person could not operate retrospectively, but if the same confers a benefit it could be made applicable retrospectively.	
(2005) 91 TAX 75 HIGH COURT KAR	Sec 45,47 & 65 Of the Sales Tax Act, 1990	In this case, the Department issued a show cause notice questioning the exemption claimed by the assessee. After lengthy exchange, the claim of exemption was accepted by the adjudicating officer. There after another show cause was issued on the same subject matter for same period. The assessee contested the claim on merits as well as on jurisdictional objection that once claim has been accepted by the Adjudicating Officer, and same has not been challenged in appeal by the department nor same was questioned by Collector or Board under suo moto revisional jurisdiction the previous action has attained finality. The Hon'ble High Court observed that It is admitted fact that the order dated 4-2-2000 (issued on 8-2-2000) competently passed by the Additional Collector-II, deciding the same issue as agitated in the second show-cause notice and after a full-fledged hearing and deliberation it was decided that the Eno Fruit Salt enjoyed exemption from the payment of sales tax. The order was open to appeal under section 45 (as it stood before substitution by Finance Act, 2000) and was subject to suo motu revision by the Board. Neither any appeal was preferred by the Sales Tax Department assailing the findings nor any revisional proceedings were initiated. The effect was that the order passed by the Additional Adjudication, attained finality having binding effect on the Sales Tax Department. Re-agitating of same issue by the Sales Tax Department is against all the principles of administration of justice and fair play. This course of action cannot be allowed because, firstly, it is against the	

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2004 PTD 2952 KARACHI HIGH COURT	Sec 38,40 & 40A of the Sales Tax Act, 1990	<p>principles of the administration of justice; secondly, it is discriminatory in nature, as any order passed in adjudication not assailed in appeal by an assessee, it always treated to be final and the same principle should be applicable to the Department; thirdly, it militates against the principles applicable to the tax matters, that the issues once settled and accepted by the Department shall not be allowed to be deviated, because it will create uncertainty which has always been deprecated and disapproved by the superior courts, legislature as well as the Board itself. Fourthly, in the present case, the issue stands decided by an adjudicating order. The Legislature has gone by enacting section 65 in the Sales Tax Act, 1990 to the extent of recognizing practice which is result of inadvertence. The learned Tribunal is also aware of this provision, which has been referred in the concluding part of the impugned order; fifthly, a vested right has created in favour of appellant with the order of the adjudicating authority, which cannot be taken away by executive branch of the Sales Tax Department by initiating fresh proceedings on the same point.</p> <p>In this case, Hon'ble High Court of Sindh has examined the provision of Section 38, 40 and 40-A of the Sales Tax Act, which gives the power to the Sales Tax department to have excess to previous stocks, accounts and records. Section 40-A empowers search without warrant. The Hon'ble High Court has at length discussed the powers.</p> <p>The learned members are requested to read this judgment to under stand the impact.</p> <p>In this case, issue arose in respect of exemption of Electric Accumulators (storage batteries ) to the assembles of electric Accumulators applied for exemption under various SROs issue by CBR.</p> <p>The Hon'ble High Court after examining the various aspects of the case has held that electric accumulators (storage batteries) do not constitute the parts and accessories of component of motor vehicles and as such are not entitled to exemption granted under various notifications. In this judgment, various principles of taxation have been propounded.</p> <p>The Hon'ble Court has held that tax is to be levied / charged under clear language which admits no ambiguity and ambiguity if any is to be resolved in favour of citizens / taxpayer and not in favour of Revenue / Government. It has been further held that there are no presumptions and inferences in respect of tax and if any thing is covered without the clear, plane, unambiguous language of law, there can be no presumption to tax.</p> <p>However, so far as the principle relating to exemption is concerned, it is not the same. Once it is established, that a tax is chargeable, then for the purpose of availing exemption, a person claiming the same has to establish that claim is squarely covered under the exemption granted and the law pertaining to the exemption is to be strictly interpreted or any presumption. The effect of exemption is that the payment of tax is allowed to escape which is otherwise chargeable.</p> <p>Another principle has also been elaborated and it has been held that CBR is empowered to issue S.R.Os and grant exemption from chargeability of tax under delegated authority and is further empowered to amend, modify, rescind, substitute and alter the terms of exemption but has no statutory jurisdiction to interpret the same which lies exclusively within the domain of the functionaries / authorities, conferred with quasi-judicial /judicial powers. The CBR is not empowered to issue instructions / circulars which may interfere with the exercise of quasi-judicial jurisdiction, vested in various authorities under the statute. If any such letters, circulars or instructions are issued by way of clarification for the convenience /guidance of the tax-</p>	
2005 PTD 53	Sec 2 & 13 of the Sales Tax 1990.		

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		<p>payers or by departmental officers and any dispute arise in respect of correctness / validity of such instructions / clarification etc. It is neither binding on the taxpayers nor they are to be followed by forums invested with quasi-judicial function under the statute. If any beneficial view is taken by the CBR or steps are taken or reduce the rigors and hardship of any law and such view is remedial in nature, the taxpayer may avail the benefit thereof and the departmental officers employed in execution of the collection or levy of tax should follow such beneficial instructions, but collection or levy of tax should follow such beneficial instructions, but it has no force of law, so as to bind the quasi-judicial forums in discharge of their quasi-judicial functions.</p>	
2004 PTD 2909 FTO		<p><b>FEDERAL TAX OMBUDSMAN</b></p> <p>In this case, the Hon'ble FTO has observed that amendment of assessment order without any valid reason would amount to maladministration on the part of taxation officer.</p>	
2004 PTD 2947 KARACHI HIGH COURT		<p><b>CUSTOM</b></p> <p>In this case, Director of Directorate General, Intelligence &amp; Investigation, (Customs &amp; Excise) had filed special customs appeal. An objection was raised by the assessee that Customs appeal U/S 196 is not competent because it states that an aggrieved person or the collector may file an appeal in High Court in respect of any question of law arising out of an order U/S 35-C.</p> <p>The Hon'ble High Court after examining the jurisdictional notifications held that Director can not be termed to be Collector in absence of any authorities for exercising and discharge of function of the Collector nor he is an aggrieved person, therefore, he can not file the appeal.</p>	
2004 PTD TRIB. 2898		<p>In this case, goods were seized by the customs authorities and accordingly collector of customs granted extension to issue show cause notice which was without any reason on the request of Director General Intelligence and Investment who had no power or authority to investigate the case.</p> <p>The learned Tribunal held that such an action was illegal for the reason that no reasons were assigned and for the reason that the adjudication proceedings were conducted on the basis of the time barred show cause notice.</p>	
2004 PTD 2592 HIGH COURT KAR	Sec 25 of the Customs Act, 1969	<p>In this case, valuation of the assessee's goods was enhanced U/S 25 of the Customs Act 1969. It was observed by the Hon'ble High Court that onus was on the Customs authorities to prove that the declared price was untrue before the same could be rejected, warranting enhancing or determination of the value. The Hon'ble High Court observed that customs authorities failed to produce any material or evidence in support of their contention that declared price was not true price, therefore, it was held that in view of lack of material, the action for rejection of the declared value / prices and for determining / ascertaining of the value or price of goods appeared to be arbitrary, whimsical, capricious, incomplete, disregard of the provision of section 25.</p> <p>The Hon'ble High Court directed that the declared price of the goods be accepted. In this case, it was also observed on the objection by the departmental representatives that petitioner had not resorted to the departmental remedies available to them to challenge the order of the rejection of the declared value. It has been further observed by the Hon'ble High Court that action of the Respondents being absolutely illegal, contrary</p>	

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		<p>to law and void abinitio forcing the petitioners to make payment of huge amounts of money in pursuance of illegal and void orders. The Petitioners were under no obligation to have recourse to the legal remedies for redress of their grievance in view of the pronouncement of the Supreme Court in a large number of cases that when the impugned order was illegal, contrary to law and void ab-initio then the aggrieved party could straight away invoke the Constitutional jurisdiction of this Court under Article 199 of the Constitution.</p> <p>It has also been held by this Court as well as by the Supreme Court that in matters relating to finance and revenue when a party is forced to make payment of huge amount in pursuance of an illegal and void order then it could approach this Court without having recourse to the departmental remedies.</p> <p>As the impugned order has been held to be illegal, contrary to law and void ab initio, recourse to this Court under Article 199 of the Constitution by the petitioners was justified. The objection with regard to the maintainability of the Constitutional Petition stands overruled.</p>	
2004 PTD 2604	Sec 25 of the Customs Act, 1969	In this case, the Customs authorities had valued the goods on the basis of understanding an agreement made with some other importers of the same goods. The Petitioner challenged the action that customs authorities were not complying with the terms of section 25 of Customs Act and petitioner was not the party in respect of the agreed valuation arrived by the Customs Authorities. The Hon'ble High Court set aside the valuation.	
PLD 2005 PESH 20		<p><b>GENERAL</b></p> <p>To apply the correct law to a particular case is the exclusive obligation of the court alone. Party to a lis is not required to point out as to how and in what manner the law is to be applied.</p>	
2005 SCMR 25		In this judgment, the Hon'ble Supreme Court has in detail discussed how to use discretionary powers. The learned Members are requested to read the judgment to understand the said principles.	
2004 PTD 2516	Article 199 of the Constitution	The Hon'ble High Court of Sindh in this case while deciding an issue of levy of customs duty on Sodium Sulphate has observed that if an order or decision is absolutely illegal, contrary to the provision of law or established practice or is mala fide, then the aggrieved party can approach the High Court directly by way of Constitutional Petition.	
2005 PTD 186 HIGH COURT KARACHI		<p>Proviso in a statute is in the nature of an exception to general rule and ought to be strictly construed.</p> <p>Notification imposing liabilities could never be given retrospective effect.</p>	