

ITBAK's News & Views

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

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IMPORTANT CIRCULARS AND NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
INCOME TAX			
Circular No.3	01-07-2004	Procedure of Deduction of Withholding Tax @ 0.005% by the Registered Stock Exchange on Sales of Shares.	36
Circular No.4	01-07-2004	Procedure of Deduction of Withholding Tax @ 0.005% of the Purchase/Sales value by the Stock Exchange on Commission Income of Members of Stock Exchange.	37
Circular No.5	01-07-2004	Procedure of Deduction of Withholding Tax @ 10% by the Stock Exchange on Carry Over Trade Mark-Up.	38
Circular No.6	01-07-2004	Procedure of Collection of Capital Value Tax @ 0.01% by the Stock Exchange on Purchase Value of Shares.	39
Circular No.7	01-07-2004	Withholding Tax on Indenting Commission Agents, Advertising Agents, Yarn Dealers, Travel Agents and Insurance Agents.	40
Circular No.8	01-07-2004	Reduced Withholding Tax @ 2% on import of specified Items/Goods.	41
Circular No.9	01-07-2004	Withholding Tax @ 5% on Gross Amount payable to the Non-Resident under the contract for advertising services rendered by TV Satellite Channels.	42
Circular No.10	01-07-2004	Exemption of Withholding Tax on Import of Agricultural Tractors in CBU Conditions.	43
Circular No.11	01-07-2004	Deduction of Withholding Tax @ 10% on Income from Commission of the Petrol Pump Operators.	44
Circular No.12	01-07-2004	Exemption of Withholding Tax on Profit on Debt/Interest on Behbood Savings Certificates and Pensioners Benefit Accounts.	45
Circular No.13	01-07-2004	Exemption of Withholding Tax on Import of Plant and Machinery and Equipment, which is entitled to exemption or reduced/lower rate of the Customs Duty.	46
Circular No.14	01-07-2004	Withholding Tax on Import of Edible Oil and allowing exemption to Export proceed of Vegetable Ghee to Afghanistan from Withholding Tax.	47
Circular No.15	01-07-2004	Deduction and computation of tax of salary for the Tax Year, 2005 commencing from 01-07-2004.	48
Circular No.16	01-07-2004	Corrigendum regarding circular No.07 of 2004, dated 01-07-2004, for commission of Indenting Agents.	49
Circular No.17	01-07-2004	Explanation of important provisions relating to amendments in Income Tax Ordinance, 2001, by the Finance Act, 2004.	50

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
Circular No.18	09.08.2004	Adjustment against Tax Liability u/s. 149 of salaried tax payers by employers allowed for income tax payments by salaried persons u/s. 234 and u/s. 236 on motor-vehicles and telephone bills respectively, if the employee is himself owner of vehicle or subscriber of telephone.	51
Circular No.I(1)S. (ITAS)	28-07-2004	Option allowed to Non-Corporate Tax Payers selected for Total Audit for the year 2004 revision of Income Tax Returns, by paying 20% higher tax as compared to the tax payable on their original return, provided there is no definite information against them. On availing such option, audit in their cases may be closed.	52
SRO (I)/2004	07-07-2004	Amendments made in Income Tax Rules (a) Rule 9(2) substituted for allowing exemption of cash house rent allowance upto 45% of the minimum time scale of his basic salary or basic salary, subject to a maximum of Rs.275,000/-. (b) Rule 51B inserted prescribing Quarterly Statement under S.165 read with S.149 regarding salary.	53
SRO 619(I)/2004	07-07-2004	Clause (13A) of Part II of Second Schedule substituted whereby reduced rate of tax @ 1% is to be collected at import stage on phosphatic fertilizers imported as specified in Notification No. SRO 609(I)/2004 dated 16-07-2004.	54
SRO 651(I)/2004	30-07-2004	Income Tax Rules amended whereby new forms of Return of Income, Certificate of deduction of tax Salary etc have been prescribed.	55
SRO 682(I)/2004	10-08-2004	Draft Amendments in Income Tax Rules for insertion of Rule 231C, in respect of Income Tax alternate dispute resolution.	56
SRO 701(I)/2004	16-08-2004	A new sub-clause inserted in clause (61) of Part-I of Second Schedule, whereby any amount donated for "Tameer-e-Karachi Fund", is now eligible for <u>rebate of tax</u> , subject to provisions of section 61 of the Ordinance.	57
SALES TAX			
Sales Tax General Order No. 3/2004	12-06-2004	Consolidation of Sales Tax General Orders, issued by the Board from 23-10-1991 to 20-12-2003.	58
Circular No. 1/33-STB/ 2004	13-06-2004	Sales Tax Budget Instructions 2004-05 issued, explaining major amendments.	59
Circular No.3/(II)ST-T & P/2004	21-06-2004	Extension of time limit for availing Sales Tax Amnesty Schemes under SRO 246(I)/2004 and SRO 247(1)/2004 for all retailers and registered persons.	60

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
Circular No.3(36) STD/99(PT-1)	14-07-2004	Procedural aspects/conditions of application of S.73 of the Sales Tax Act, explained.	61
Circular No.3(13)ST- L&P/2004	29-07-2004	Clarification issued regarding exemption on imports and supply of imported and locally manufactured plants, machinery and equipments specified in SRO 500(1)/2004 dated 12-06-2004.	62
Circular No.3(13)ST- L&P/2004	09-08-2004	Clarification issued regarding SRO 500 (I)/2004 dated 12-06-2004, in respect of plant, machinery and equipment imported under a concessionary notification will also attract zero-rating of sales tax, subject to conditions in column-4 of SRO 500(I)/2004 dated 12.06.2004.	63
Circular No.3(13) STP/2003	12-08-2004	Clarification regarding adjustment of sales tax paid on value addition at custom stage by commercial importers.	64
SRO 246(I)/2004 read with SRO 525(I)/2004	05-05-2004 21-06-2004	Sales Tax Amnesty/Exemption allowed to Retailers, on fulfillment of specified conditions upto 20-06-2004, which subsequently extended upto 30-06-2004.	65
SRO 247(I)/2004 read with SRO 526(I)/2004	05-05-2004 21-06-2004	Sales Tax Amnesty/Exemption allowed of additional-tax/penalty to registered persons, on fulfillment of specified conditions upto 20-6-2004, which subsequently upto 30-6-2004.	66
SRO 335(I)/2004	24-05-2004	Repayment or refund of Sales Tax to the extent of 10.5% of the amount of tax per metric ton of oil seeds paid at the import stage to solvent extractors, subject to the following conditions.	67
SRO 485(I)/2004	12-06-2004	Sales Tax Rules 2004 issued updating and consolidating earlier Rules for Registration, Voluntary Registration and De-Registration; Filing of Monthly Returns; Credit and Debit Notes and Destruction of Goods; Apportionment of Input tax; Refund; Special Audit; Zero Rating of Supplies against International Tender for Afghan refugees; Supply of Zero-rated Goods to Diplomats/ Diplomatic Missions/Privileged Persons and Organizations; Tax Payers Authorized Representative Alternate Dispute Resolution and Recovery, etc.	68
SRO 484(I)/2004	12-06-2004	The Sales Tax Special Procedure Rules, 2004 issued updating and consolidating earlier Rules regarding Special Procedure for filing of NIL Returns; Payment of Sales Tax by Commercial Importers on Value Addition; Payment of Retail Tax; Payment of Sales Tax by Jewelers; On Electric Power; on Natural Gas, for supply of Ginned Cotton; for Spinning Industry; Supply of Sugar to TCP; Supply of Food, Persons providing Taxable Services; Payment by Steel Metter's and Re-Rollers; Ship Breaking Industry; and for Zero-Rating of Hand-Knotted Carpets.	69
SRO 592(I)/2004	08-07-2004	Certain amendments made in SRO 484 dated 12/6/04 for Sales Tax Special Procedures Rules, 2004 in regard to payment of Sales Tax commercial importers on value addition.	70

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
SRO 609(I)/2004	15-07-2004	Fixation of values of phosphatic fertilizers, for the purposes of assessment of sales tax chargeable at import stage as well as against the local supply of these fertilizers.	71
SRO 657(I)/2004	03-08-2004	Payment of Sales Tax on value addition basis as prescribed in Rule 14 shall be mandatory and the commercial importer shall be exempt from requirements of audit.	72
SRO 673(I)/2004	09-08-2004	Certain amendments made in the Sales Tax Special Procedure Rules, 2004 (SRO 484(I)/2004 dated 12-06-2004) in respect of sales tax payments by Retailers.	73
SRO 710(I)/2004	19-08-2004	Amendment made in the Sales tax special procedure rules, 2004 whereby Rule 83(2) substituted to provide for no routine audit of the custom house agents who deposit sales tax in accordance with the minimum benchmark value per document.	74
CORPORATE LAWS			
Circular No.21 of 2004	21-04-2004	Modaraba may place its quarterly accounts on its website, subject to fulfillment of specified conditions.	75
Circular No.23 of 2004	25-06-2004	Prudential Regulations for Non-Banking Finance Companies (NBFCs) – Modification of OAEM (Other Assets Especially Mentioned) classification.	76
Circular No. 24 of 2004	01-07-2004	Extension of applicability of Companies Easy Exit Scheme (CEES) upto 31-12-2004.	77
Circular No. 25 of 2004	05-07-2004	Amendments in Prudential Regulations for Modaraba made, in view of practical difficulties.	78
Circular No.26 of 2004	21-07-2004	In future such Banks, would not be allowed to act as Bankers to the Issue "who have failed to accept duly completed application from general public investors whether their account holders or not and the matter of such errant banks would also be taken up with SBP and the Stock Exchange.	79
Circular No. 27 of 2004	11-08-2004	Clarified that Revised Fourth Schedule does not apply to the financial statements for the year ended June 30, 2004. However, if any listed company desires to prepare its accounts in accordance with the revised schedule, it may do so and disclose the same in the notes to the accounts.	80
Circular No. 28 of 2004	31-08-2004	Clarification regarding holding of election of Directors, pursuant to Companies (Amendment) Ordinance, 2002.	81
Circular No. 29 of 2004	05-11-2004	Clarification regarding change in "Financial Year End" for Cotton Textile Industry from September to June, in view of change directed by CBR vide SRO 684(I)/84 dated 10-08-2004, for Income Tax purposes.	82

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
SRO 589(I)/2004	05-07-2004	Fourth Schedule disclosure requirements as to Balance Sheet and Profit & Loss Account of Listed Companies substituted.	83

SYNOPSIS OF IMPORTANT CASE LAW

INCOME TAX

CITATION	SECTION	ISSUES INVOLVED
2004 PTD 1994		In this case, the Hon'ble High Court of Peshawar has held that CBR is not a judicial forum under Income Tax Ordinance, 1979 to qualify for interpretation of any provision of the ordinance. It has been further held that duty of Income Tax Officer is to apply law notwithstanding the claim of assessee, even if result would be favourable to assessee, in the same way as he would decline assessee's claim for concession not admissible under law
2004 PTD 1904	65 of the Income Tax Ordinance, 1979	It has been held by Hon'ble High Court of Sindh that reopening cannot be made on the same set of facts disclosed by the assessee in the return. <u>It has been further held that misapplication of law and ignorance of law or decisions of superior Courts would not furnish ground for re-opening of assessment under Section 65 of Income Tax Ordinance, 1979.</u> Such misapplication or ignorance could not come within scope of definite information as same would amount to a change of opinion, which did not warrant action under Section 65 of Ordinance, 1979. The impugned notice was held to be in excess of jurisdiction.
2004 PTD 1949		<p>It has been held by the Hon'ble Court that where language of a statute in its ordinary meaning and grammatical constructions leads to a manifest contradiction of apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice, then a construction may be put upon the same to modify the meaning of words or even the structure of sentence. Such construction must, however, advance purpose of the enactment and should be in accordance with the requirements of justice and economic equities.</p> <p><i>Salman Pasha's case of SO(17)/Account before ITR.</i> →</p> <p>I</p> <p>It has been further observed that where a statute or legal instrument is open to two interpretations, then one beneficial to citizen would be adopted. In case of ambiguity, confusion or absurdity created by authors and framers of law/policy/notification, then lean would be given in favour of citizen and against those who created confusion or absurdity.</p>
2004 PTD 1896		It has been held on the basis of earlier judgments that an Export rebate, claim is also allowable to partner of a registered firm.
2004 PTD 1978 (2004) 90 TAX 15	Sec 136 of the Income Tax Ordinance, 1979	It has been held by the Hon'ble Court that courts were not bound to answer the questions referred to it if the party at whose instance the questions had been referred, had remained absent.
2004 PTD 1655		While deciding a case, the Hon'ble Tribunal has elaborated following principles of Interpretation of statutes (a) Charging provisions are always

prospective unless otherwise provided. (b) Legislature is fully competent to legislate a provision with retrospective operation (c) Unless a charging provision has not been made retrospectively, the same should always be treated as prospective. (d) Retrospective in respect of statute cannot be presumed. (e) Retrospectively even in a procedural law is to be avoided if it affects an existing right of otherwise causes inconvenience of injustice to any one.

2004 PTD 2012	Sec 16 of the Income Tax Ordinance, 1979	The Hon'ble Lahore High Court has reiterated that the share of super tax payable by a registered firm could not be apportioned with reference to the share of the partner as computed under section 16(1)(b) of the Ordinance.
2004 PTD 2511	Sec 59 of the Income Tax Ordinance, 1979	In this case, selection of returns filed under Self Assessment Scheme was challenged. The Hon'ble High Court after detailed discussion has held that selection of cases for processing under normal law on the basis of guidelines issued after the filing of the returns and withholding of the guidelines till the filing of returns by the assessee, appeared to be malafide and selection of the case of the assessee for total audit on the basis of said guidelines was improper.
(2004) 90 TAX 90 H.C LAH	Sec 32 of the Income Tax Ordinance, 1979	The Accounts of the assessee were rejected on the basis of wastage in manufacturing account. The Hon'ble High Court has reiterated the principle that accounts cannot be rejected without finding defect or discrepancy in the books of account.
(2004) 90 TAX 39 (TRIB)	Sec 56 & 132 of the Income Tax Ordinance, 1979	In this case, while deciding a Reference Application, the Hon'ble Tribunal has reiterated its decision that amendment made in Section 56 through Finance Ordinance, 2001 is a curative and remedial in nature, thus it is retrospective.
2004 PTD 2352 TRIB	Sec 13 of the Income Tax Ordinance, 1979 and Rule 207a of Income Tax Rules, 1982	In this case, assessing officer made addition under Section 13 and valued the property. The Assessee challenged the addition on several points. The Hon'ble Tribunal after examining the provisions of law has held that addition u/s 13 can not be made without evidence that assessee has expended more money than declaration. It has been further observed that property purchased through registered document fell within the mischief of Rule 207-A and could not be discharged whimsically. It was further observed that registered documents have legal sanctity and stronger evidence is required to cast doubt on its authenticity.
2004 PTD 2366	Sec 111 & 116 of the Income Tax Ordinance, 1979	In this case, Penalty was imposed by the assessing officer under Section 116 firstly without issuing any notice u/s 116 and secondly on the ground that assessee has not filed any appeal against main assessment where addition of concealment was made. The Hon'ble Tribunal has held that penalty order was illegal for want of notice. It was further held that that 'mens rea' is a condition precedent to levy of penalty under section 111 and the assessing officer has made no attempt to establish 'mens rea' and this lapse alone is sufficient to render the penalty order nullity in the eye of law and it would be a travesty to allow such order to hold the field simply on technicality.
2004 PTD Trib. 2380	Sec 107AA of the Income Tax Ordinance, 1979	In this case, tax credit U/S 107 AA of the Income Tax Ordinance 1979 was allowed. However, subsequently the assessing officer invoked the jurisdiction of 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 u/s 107AA 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
Indian Tax Act,
1922

Reference



In this case, the Hon'ble Supreme Court of Azad Jammu & 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 these 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, such 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 has referred the matter or not.

2004 PTD Trib. 2577

Clause 102 A
of Part 1 of
Second
Schedule to
the Income Tax
Ordinance,
1979.

ITAT.

*Islamic not
Islamic is not
TO jurisdiction.*

*Profit as per
Accounts..*



In this case, a Modaraba claimed exemption under clause 102-A of Part-I of the Second Schedule to the Income Tax Ordinance 1979 which was income from investments of amounts in banks. The assessing officer rejected exemption on the ground that income earned from investment of amounts in bank was interest / riba which was not permissible under the injunction of Islam and assessee had violated section 10 of the Modaraba companies and Modarba (Flotation & Control Ordinance 1980). It has been decided by the tribunal after examining the provisions of law that assessing officer had no jurisdiction to decide whether the transactions under taken by the assessee had conformed 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. 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. 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 certificate 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. 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.

2004 PTD Trib. 2589

Sec 50(2A) of
the Income Tax
Ordinance,
1979

In this case, the assessee paid various parties amounts on account of interest / markup. The assessing officer invoke the provision of Section 52 as he was of the opinion that since assessee has not deducted tax from such payments u/s 50(2A), the assessee was declared an assessee in default. 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 maintained accounts of customers. The assessee's explanation was not accepted by the assessing officer. The learned Tribunal after examining the provision of section 50(2A) observed that it clearly stipulates that payment by way of interest or profit on account

or deposit maintained within 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 that 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 the company. Thus, the Hon'ble tribunal held that provision of section 50(2A) were not applicable to the facts of the case.

2004 PTD 2852

Sec 13 & 65 of
the Income Tax
Ordinance,
1979

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 Constitution 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. It was further submitted before the Court that in view of the amendment in proviso to sub-section (1) of section 13 of the Ordinance 1979, income chargeable to tax under that section is includible in the total income of the income year relevant to the assessment year in which discovery was made. The Hon'ble High Court of Lahore held 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 back as on 06-12-1993. The Hon'ble Court observed that learned counsel is correct in pointing out that the matter pertaining to the assessment year 1993-94 and at best could be reopened latest by 30-6-2000 in view of proviso to sub section (3) of Section 65 of Ordinance 1979. 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. It was further observed that 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 to the provisions of subsection (1) of section 13 of the Ordinance 1979 is totally misplaced in as much as these provisions could only be invoked for the purpose of application of rate. That provision also cannot directly or indirectly extend the period of five years limitation provided for reopening of an assessment.

2004 PTD Trib. 2786

Sec 55, 56,
59A, 65, 80C
and 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 in the facts and circumstances of the case.

2004 PTD Trib. 2777

Sec 34, 35,
80CC 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 stipulations.

Dep. under
PTR

- 2004 PTD 2749 Sec 80C 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 premises that services rendering is outside the scope of section 80-C. As against the treatment of the statement filed by the assessee that it is a contractual income chargeable to tax u/s 80-C. The Hon'ble Income Tax Appellant Tribunal after examining the contents of the agreement and the provisions of Section 80-C and the definition thereof in respect of service, held that the income is of a contractual nature and not of service nature, as such, action 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 understanding of the term "turn key contract".
- 2004 PTD 2658 Sec 66A of the Income Tax Ordinance, 1979 In this case while examining the preview and scope of order passed u/s 66-A, the Hon'ble Tribunal has held that Inspecting Additional Commissioner has to apply his mind independently and validity of action was questioned by ITAT on the basis of second hand information generated by audit department.
- 2004 PTD 2648 Sec 159 of the Income Tax Ordinance, 1979 & Companies Ordinance, 1984 In this case, the assessment proceedings were initiated after the dissolution of the company. Learned Tribunal after examining the provisions of the Company's 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 through 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.

SALES TAX

- (2004) 90 TAX1 SC PAK Sec 2(22), 3, 28, 30 & 34 of the Sales Tax Act, 1990 It will be recalled that the Hon'ble High Courts of Lahore and Karachi had given the judgments that sales tax will not be levied on receipt of advance payment of taxable supplies, whereas the Hon'ble Peshawar High Court gave a contrary view, holding that sales tax is to be levied on point of time of receipt of advance payment. The Controversy has been settled by the Hon'ble Supreme Court of Pakistan in the case of D.G. Khan Cement Co Ltd. and others where it has been held that levy of sales tax is to be made on receipt of advance payment of taxable supplies. However, the Hon'ble Supreme Court observed in respect of imposition of penalty and additional tax that each and every case has to be decided on its own merits as to whether the evasion or payment of tax was willful or malafide, decision of which would depend upon the question of recovery of addition tax. In view of their lordships observation in the given cases, it was held that penalty and additional tax was not justified in law.
- (2004) 90 TAX 38 SC PAK 2004 PTD 2214 SC PAK Sec 13 of the Sales Tax Act, 1990 and SRO 582 (i)/98 and 987(i)/99 In this case, the assessee imported industrial sewing machines as commercial importer and availed exemption on the basis of SRO 582(i)98 dated 12.6.1998. The exemption was not granted by the department for the reason that according to them exemption was not for importer as it was for manufacturer of taxable goods. The Hon'ble high court of Lahore after examining the language of said SRO held that there was no such condition. The department filed a Petition for Leave to Appeal. The Hon'ble Supreme Court after detailed examination refused the leave and upheld the judgment

2004 PTD 2267
PESHAWAR HIGH
COURT

Sec 3 of the
Sales Tax Act,
1990

of Lahore High Court.

In this case, the Hon'ble High Court has held that amendmend made in Section 3(1-A) i.e further tax, through Finance Act 1999 through clause (c) of subsection (2) and insertion of subsections (4) and (5) are ultra vires of the Constitution of Pakistan.

Note. Learned Members are requested to read this judgment carefully as it is a very important issue.

2004 PTD 2637
LAHORE HIGH
COURT

Sec 21 of the
Sales Tax Act,
1990

In this case, the Petitioner's name was put in the list of suspicious / suspected / fake units without any show cause notice or the basis. The Hon'ble Court held that there was no provision prior to the amendment in Section 21 made in 2003 to declare a person as suspected/fake unit and that action was against the principles of natural justice and without material.

CUSTOMS

2004 PTD 2516

Custom Act
and
Constitution

The Hon'ble High Court of Sindh in this case while deciding an issue of levy of customs duty on Sodium Sulfate has observed that if an order or decision is absolutely illegal, contrary to the provision of law or established practice or is malafide, then the aggrieved party can approach to High Court directly by way of Constitutional Petition

2004 PTD 2592 HC
KAR

Sec 25 of the
Customs Act,
1969

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 the value or price of goods would appear to be arbitrary, vehimistical, capricious, in complete disregard of the provision of section 25. 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 rejection of the declared value. It has been observed by the Hon'ble High Court that action of the respondents being absolutely illegal, contrary to law and void ab initio 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.

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 and agreement made with some other importers of the same goods. The Petitioner challenged the action that Custom authorities were not complying with the terms of section 25 of Custom Act as 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 and directed the department to give an opportunity of hearing to the petitioner where after goods to be valued in the light of section 25.

2004 PTD Trib. 2898 Custom Act, 1969

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 Investigation who had no power or authority to investigate the case. 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.

GENERAL LAW

PLD 2004 SC 600
Supreme Court

Article 184 of
The
Constitution

In this case, Hon'ble Supreme Court while examining the scope of public litigation has held that Supreme court would consider each case on its own merits, whether element of **public importance** was involved in enforcement of fundamental rights irrespective of the individual's violation of the infractions of a group or a class of persons.

PLD 2004 SC 489
Supreme Court

Code of
Ethics

It has been observed by the Hon'ble Supreme Court that filing of affidavit by Advocate in relation to facts of the case was not proper not being in consonance with principles of ethics which were binding upon Advocates being officer of the Court.

PLD 2004 SC 520
Supreme Court

Gift

It has been held by the Hon'ble Supreme Court that preferential gift was not void under Islamic law. A father was competent to give preference to one heir, such gift might not be in accordance with equality, but same was not prohibited and could not be termed as void.

2004 SCMR 1640
Supreme Court

Duty of Court

It has been observed by the Hon'ble Supreme Court that it is the duty of the court to apply law which is applicable to the facts of admitted or established/proved cases on record as the parties are not bound to engage a counsel.

2004 SCMR 1622
Supreme Court

Jurisdiction

The Hon'ble Supreme Court has held that Jurisdiction not vesting in court could not be conferred upon it merely by consent of parties or omission of any party to raise objection to such effect.

2004 SCMR 1219
Supreme Court

Gift Vs
Nomination

In this case the Hon'ble Supreme Court has elaborated the distinction between a Nomination and Gift. This is very important judgment and learned members are requested to read the entire judgment for better understanding.

PLD 2004 SC 694
Supreme Court

Delegated
Legislation

The Hon'ble Supreme Court in this judgment has enumerated the principles for determination as to whether a piece of delegated legislature was bad on the ground of arbitrary and excessive delegation.

PLD 2004 Lah 717

Administration
of Justice

It has been observed by Hon'ble Lahore High Court that Justice delayed is justice denied, but there is equally the other aspect of the matter that some time justice hurried is justice buried. Court charged with duty of administering justice is expected to maintain a balance, so that neither the matter is delayed unnecessarily nor it is disposed of in such a hasty manner that it may be violative of basic principles of law.

PLD 2004 251
Peshawar

Fundamental
Rights

In this land mark judgment, it has been held that where any Encroachment and invasion made on the Fundamental Rights by the public functionaries in violation of law or when such rights were infringed maliciously and malafidely, Courts would not hesitate to firmly establish them and issue writ to wrong doers requiring them to do what was required by law to be done and to refrain from doing an act which was prohibited by law and the Constitution.

FEDERAL TAX OMBUDSMAN

2004 PTD 2017

It has been observed by Hon'ble Federal Tax Ombudsman that ignoring a decision of superior courts amounts to an arbitrary conduct entailing maladministration.

2004 PTD 2345

Section 22, 30
and 34 of the
Income Tax
Ordinance, 19
79

In this case, complaint was filed before the Hon'ble Federal Tax Ombudsman that the assessing officer has not allowed set off of loss suffered during the same year from the income from other sources. The Hon'ble FTO has observed that such an ignorance of statutory provision was proof of maladministration. The Commissioner was directed to revise the order by invoking the provisions of Section 122A and was directed to set off the loss assessed under Section 30 as adjustable under Section 34 of the Income Tax Ordinance, 1979.

2004 PTD 2909-FTO

Sec 122 of the
Income Tax
Ordinance,
2001

In this case, the Hon'ble FTO has observed that amendment of assessment order without any valid reason would amount to mal-administration on the part of taxation officer.

ANNUAL MEETING OF ASIA OCEANIA TAX CONSULTANTS' ASSOCIATION

All Pakistan Tax Bar Association in collaboration with Income Tax Bar Association Karachi is hosting the General Council Meeting of the Asia Oceania Tax Consultants' Association (AOTCA). It is for the first time that Pakistan has been honoured to hold the annual meetings of AOTCA. Several delegates from Australia, Bangladesh, China, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Singapore and Sri Lanka have confirmed their participation in the forthcoming meeting.

On this occasion a seminar is being held to discuss and compare the Pakistan Economy with Asean Economies. Dr. Ishrat Hussain, Governor State Bank of Pakistan has graciously consented to be the Chief Guest as well as the Key Note speaker of the seminar –

Date : November 26, 2004
Venue : Pearl Continental Hotel, Karachi
Time : 05:00 p.m.

The Seminar will be followed by the Dinner and Cultural Show.

On 27th November, 2004 a separate seminar is being held under the auspicious of AOTCA where two foreign delegates of member bodies will make their deliberations.

Income Tax Bar Association Karachi, Bar Chambers, New Income Tax Building,
Shahra-e-Kamal Ataturk, Karachi. – Tel: 9211792 – Email: itbarkhi@cyber.net.pk