



# ITBAK's

## News & Views

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

NV # 03/2003

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### SUMMARY OF CIRCULARS/NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
<b>INCOME TAX</b>			
Circular No.02 of 2003	18.06.2003	Instruction issued to Commissioners for Issuance of Exemption Certificates under section 148 of the Income Tax Ordinance 2001, to manufacturers on fulfillment of specified conditions.	50
Circular No 03 of 2003	19.06.2003	Concessional Rates of Withholding Tax for more than ten years old Goods Transport Vehicles explained.	51
Circular No.04 of 2003	21.04.2003	Amnesty for defaulters of Corporate Assets Tax (CAT)- Amendments introduced through the Finance Act, 2003 for waiver of Penalty and Additional Tax, if CAT liability is discharged by 30.09.2003, explained.	52
Circular No.05 of 2003	30.06.2003	Procedure explained for issuance of Income Tax Refunds under the Income Tax Ordinance 2001.	53
Circular No.06 of 2003	09.07.2003	Explanation of important amendments by Finance Act, 2003 relating to provisions of Withholding Taxes.	54
Circular No.07 of 2003	11.07.2003	Explanation of important amendments by Finance Act, 2003, relating to various provisions of law.	55
Circular No.08 of 2003	26.08.2003	Provisions of S.111(2) regarding Taxation of Un-explained Investment in the year of discovery by the Commissioner, shall not be resorted beyond the period of five preceding years, from the tax year which is being looked into.	56
C.No.2(1) S.Asstt/2002(I)	27.05.2003	Instructions regarding Harmonization of the Jurisdiction of Income Tax and Sales Tax Department.	57
C.No.2(1)S.Asstt/2002(I)	28.06.2003	Jurisdiction of Director General of Income Tax and Sales Tax LTU, Karachi	58
C.No.2(1) S.Asstt/2002(II)	28.06.2003	Jurisdiction of Commissioners of Income Tax, Large Tax Payer Unit, Karachi.	59
C.No.2(1) S.Asstt/2002	10.07.2003	Approval given by CBR for assignment of Jurisdiction of Corporate Exchange Houses to Companies Zone 1, Karachi	60
SBP Circular No.22	30.06.2003	SBP Directed all Banks/DFIS to provide information to CBR on biannual basis, with immediate effect, in respect of those accounts where Bank/DFI pays any profit/return in excess of Rs.10,000 per annum on account/deposit maintained with the Bank/DFI.	61
C.No.7(8) S.Asstt/03(Misc)	10.09.2003	Statutory Notices issued by Taxation Officer should mention their names, telephone numbers and affix their official stamp. Further, supervisory officers to monitor the situation and action to be taken against the delinquent Officers.	62



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C.No.7(8) S.Asstt/03(Misc)	10.09.2003	Short payment of Tax not to be considered as a ground for selection of Audit.	63
C.No.7(8) S.Asstt/03(Misc)	10.09.2003	Persons owning flats having area of 1,500 sq. feet and above only are required to file Income Tax Return, as envisaged under sub-clause (iii) of clause(b) of S.114(1) of Income Tax Ordinance, 2001.	64
C.No.7(8) S.Asstt/03(Misc)	10.09.2003	No notice u/s. 176 calling for information and evidence, should be issued to any person without the prior approval of the concerned commissioner, Zonal CITs are advised to exercise due care in granting such approval.	65
C.No.7(7)S(Asstt)/03	12.09.2003	Non-declaration of the "method of accounting" and any omission in "verification" part of the Return of Income (Individuals and AOP), regarding maintenance of books of accounts, for the TAX YEAR 2003, shall not be considered as only ground for selection of case for audit.	66
C.No.7(7)S(Asstt)/03	19.09.2003	In cases of those Tax Payers, where last assessed income is upto Rs.250,000, which are selected for audit for Tax Year 2003, Books of Accounts may not be insisted upon and the audit would be carried out in light of audit parameters set out in the last year. Tax Payers will have option to associate any representative of concerned Trade/Market Association, in the audit proceedings, if they so desire.	67
C.No4(4)IT.Jud/03	23.09.2003	(a) Certain clarifications issued for permissibility of filing of Income Tax Returns, Wealth Statement, Statement u/s.115(4) for Presumptive Income in the old forms, instead of those prescribed through SRO No.861 dated 01.09.2003.	68
		(b) Clarified that Tax payers falling under Presumptive Tax, where the amount of tax deduction is less than Rs. 1,000/- are not required to file Statement u/s. 115(4), if they are otherwise not liable to file Income Tax Return.	69
		(c) Filing of Employers' Certificates shall not be insisted as required under Income Tax Rule 45, where such certificates have already been issued to Employees by Employer and Annual Statement under section 165 have been filed.	70
SRO 380(I)/2003	03.05.2003	Retrospective amendments in S.147 regarding payment of advance tax for the year beginning on 01.07.2002	71
SRO 408(I)/2003	08.05.2003	Exemption from applicability of provisions of S.153(i) to the payments received by M/s. ICI Pakistan Ltd, for the supply of petroleum products, by Insertion of clause (43E) in Part-IV of Second Schedule	72
SRO 437(I)/2003	22.05.2003	Draft Amendments proposed in Income Tax Rules 2002, prescribing New Income Tax Return Forms, Certificate of Deduction of Tax, Wealth Statement, Statement u/s.115(4) for presumptive tax and specifying list of Documents to be filed with Return.	73
SRO 541(I)/2003	13.06.2003	Final Rules 211 to 220A issued for Procedure for Approval of Non-Profit Organizations and related formalities.	74
SRO 608(I)/2003	28.06.2003	Draft issued for certain amendments proposed in Income Tax Rules, 2002.	75
SRO 707(I)/2003	12.07.2003	Amendment in Income Tax Rules, prescribing new Income Tax Return forms for Individuals and AOPs.	76

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
SRO 855(I)/2003	29.08.2003	Provisions of S.153(1) made inapplicable for payments received by M/S. TOTAL PARCO PAKISTAN LIMITED (TPPL) for supply of Petroleum products, by insertion of clause (46A) in Part-IV of Second Schedule.	77
SRO 856(I)/2003	27.08.2003	Provisions of S.153(1) made inapplicable for payments received by M/s. Enar Petrotech Services (Pvt) Ltd for supply of Petroleum products by insertion of clause (46B) of Part-IV in the Second Schedule.	78
SRO 857(I)/2003	27.08.2003	Provisions of S.153(1) shall not apply to payments received by M/s. Bosicor Pakistan Ltd for supply of its products, by insertion of clause (46C) in Part-IV of the Second Schedule.	79
SRO 861(I)/2003	01.09.2003	Income Tax Rules amended for prescribing New Income Tax Return Form, Salary Certificate, Wealth Statement, Statement of Presumptive Tax of list of Documents specified to be filed with return of Income.	80
SRO 908(I)/2003	15.09.2003	Reduced Rates of withholding tax @ 3% of Customs Duty and Sales Tax paid value prescribed under S.148, in respect of any edible oils and condemned Ship Imported for purpose of breaking.	81
SRO 931(I)/2003	25.09.2003	Draft amendments in Income Tax Rules 2002 for evaluation of Non-Profit Organizations for approval/renewal of approval.	82

### SALES TAX

Instruction No.8/2003	18.04.2003	Mode of proof of payment under S.73 of the Sales Tax Act, 1990 for banks. <i>X by inst. #17.</i>	83
Instruction No.17/2003	23.07.2003	Drafts/Pay Orders obtained from a Bank, where the Buyers do not have a Bank Account. This clarification ceased to exist for transactions made effective 01.7.2003, in view of amendment of S.73 of Sales Tax Act by Finance Act, 2003.	84
Instruction No. 9/2003	29.04.2003	Customs Collectorate to deny DTRE approval to all such persons, who have defaulted in payment of accepted/adjudicated sales-tax liability.	85
Instruction No.10/2003	30.04.2003	Supplies of Petroleum Products to Export Processing Zones, are to be Zero Rated to the extent of consumption in the manufacture/production and on the balance Sales-tax payable.	86
Instruction No.11/2003	12.05.2003	Sales Tax is leviable on value of supply which includes Federal (withholding Income Tax etc), Provincial and Other taxes at import or any subsequent stage of transaction for import of goods.	87
Instruction No.12/2003	19.05.2003	Adjustment of input tax paid on advertisement services by Registered clients on amended invoices issued by PTV is available on fulfillment of specified conditions.	88
Instruction No.13/2003	24.05.2003	Entitlement of input tax adjustment on electricity to Restaurants to the extent of electricity consumed by them for preparation or supply of food items in the service areas which are liable to Sales Tax. However, no adjustment of input tax is permissible on other areas/activity which are not subjected to Sales Tax.	89



CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
Instruction No.14/2003	27.05.2003	Importers of taxable goods, who are Importing/ purchasing goods not for further sales or business or non-business use, are required to get registered and pay sales tax on computed value addition on supply of goods made to themselves.	90
Instruction No.15/2003	16.06.2003	All persons involved in any taxable activity of production, supply, transmission, distribution or retailing of L.P.G (including supply from bore-holes and wells) are liable to discharge their statutory responsibilities under the provisions of Sales Tax Act, 1990 read with Collection and Payment of Sales Tax on Natural Gas Rules, 1999.	91
Instruction No.16/2003	21.06.2003	Clarified that SRO 500 (I)/2003 dated 7.6.2003 giving amnesty by payment of sales-tax @ 2% of turnover declared with income-tax authorities not applicable to persons against whom the cases have already been made out or contravention report or audit observation had been issued for any short levied/short paid amount or tax evasion/tax fraud are not entitled for exemption from payment of Sales Tax	92
Instruction No.17/2003	23.07.2003	Instruction No.8 dated 18.4.2003 ceased to exist for transaction made with effect from 1.7.2003 in view of amendments in S.73 of Sales Tax Act, 1990 by the Finance Act, 2003.	93
Instruction No.18/2003	30.07.2003	Importer or purchaser of locally manufactured machinery is required to submit an Indemnity Bond to the extent of sales tax exemption available under SRO 987(I)/99 dt.30.8.99. It is clarified that Indemnity Bond furnished in lieu of tax levied and payable on the machinery supplied duly supported by an attested copy of Sales Tax Registration be submitted by the purchaser to the Collector of Sales Tax, in whose jurisdiction the local supplier is located and in case of import to the Collector of Customs, in whose jurisdiction the goods are being cleared.	94
Instruction No.19/2003 Instruction No. 20/2003	15.08.2003	Murabbajaat sold in packed/bottled forms in retail sale/bulk packing are chargeable to Sales Tax.	95
Instruction No.21/2003	16.08.2003	Instructions laid down for new Sales Tax Registrations, including specification of required documentation.	96
Instruction No.22/2003	26.08.2003	Amnesty provided under SRO 500(I)/2003 dated 7.6.2003, is also applicable to persons providing and rendering taxable services under Provincial Sales Tax Ordinances levying sales tax on services in all provinces.	97
Instruction No.23/2003	10.09.2003	Trees are exempt from Sales Tax being Agricultural Produce. However, wood including Firewood, Fuel Wood, Timber, Logs and all other kinds of woods are chargeable to sales tax @ 15% and if supplied to non-registered persons, also attract further Tax @ 3% under S.3(1A) of Sales Tax, 1990.	98
Special Exemption Order	11.06.2003	Special Exemption of GST on Truck No. 7 of 2003 assembled or locally manufactured by M/s. Sigma Motors (Pvt) Ltd, for supply to Armed forces under specified contracts.	99
S.T.C No.1/12.STB/2003	09.08.2003	Notification No.507(I)/2003 dt.7.06.2003 regarding bar on supply of specified goods to non-registered persons, shall be deemed to be effective from 1.9.2003.	100
S.T.C No.3(36) STP/99-Pt-1	09.08.2003	Due to operational difficulties, application of amended provisions of S.73 of Sales Tax Act held in abeyance till 31.8.2003 and provisions that existed prior to substitution by Finance Act, 2003 made operative.	101



CIRCULARS/  
NOTIFICATIONS  
REFERENCE

## DATE

## ISSUES INVOLVED

ITBAK  
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REF: NO.

## CORPORATE

Circular No.12	14.05.2003	Clarification as regards "Director's Interest in any other Company" for purposes of obtaining fresh License(s) under S.282 of the Companies Ordinance, 1984 read with circular No.10 dated 10.4.2003.	102
Circular No.13	26.05.2003	Listed Companies are advised to maintain their Website, for convenience of its Investors, Share Holders and General Public for making investment decisions.	103
Circular No.14	11.06.2003	NBFCs permitted / authorized to raise deposit through issuance of COIs/CODs are advised to ensure compliance with Rule 12(1)(c) of the NBFC Rules.	104
Circular No.15	08.07.2003	Appointment of whole time Secretary for a Listed Company made mandatory as per S.204A of the Companies Ordinance, 1984	105
Circular No.16	18.07.2003	Modaraba Companies and Modarabas ?	106
Circular No.17	21.07.2003	No prosecution proceedings shall be initiated by any Division against any person and no cognizance of offences punishable under any of the laws falling within the jurisdiction of SECP, which involve punishment by courts may be taken except with the prior approval of the Chairman, in accordance with the prescribed procedure laid down in the circular	107
Circular No.18	31.07.2003	Rules for NBFCs alongwith all Circulars / Directions / Clarifications, pertaining to said Rules applicable to NIT, ICP and the NBFCs engaged in any one or more forms of business of investment finance services; housing finance services; venture capital investment and discounting services. Further, NBFCs carrying out Leasing are required to submit all information, returns and statements etc to SECP in the same manner and format as previously prescribed in circular No.21 of 2000 dt.26.12.2000 issued in terms of Rule 19 of Leasing Companies, (Establishment and Regulation) Rules,2000.	108
Circular No.19	13.08.2003	Relaxation has been granted by Commission to NBFCs providing Investment Finance Services, Discounting Services and Housing Finance Services from the application of IAS 39 and 40 in view of practical difficulties, but it has been directed that such companies shall continue observing SBP's BSD Circular No11 dated 11.09.2002 regarding the application of said IAS till further decision.	109
Circular No. 21	25.08.2003	NBFCs undertaking the business of Leasing only are directed to conduct their business in conformity with the prescribed directions/regulations called prudential regulations for NBFCs undertaking the business of Leasing only, which are same as were earlier prescribed through the Leasing Companies (Establishment and Regulation) Rules, 2000	110
Circular No. 22	11.09.2003	Investment Banks, Modarabas (Other than Trading Modarabas) and Leasing Companies are required to prepare their financial statements in accordance with the requirements of IAS 30, insofar as these requirements are not inconsistent with the Ordinance, including Fourth Schedule, and in case of any conflict or inconsistency, the requirement of the Companies Ordinance, shall prevail.	111



## SYNOPSIS OF IMPORTANT CASE LAW

CITATION	SECTION	ISSUES INVOLVED
<b>INCOME TAX</b>		
2003 PTD 589	50(6A) & 86 <i>50(6A) on actual</i>	In this case, the department charged additional tax u/s 86 on the alleged failure of non deduction of tax on dividends. The ground taken by the department was that since the assessee is maintaining accounts on mercantile basis, the assessee should have deducted tax. The Hon'ble High Court dismissing the appeal of the department and after examining the statutory provisions of Section 32, Explanation (b) to Section 23(1) held that responsibility of deduction of tax in the case of dividend was on actual payment.
2003 PTD 593	96, 99 and 156 <i>→</i>	In this case, an addition under Section 2(20)(e) was made, which was set aside by the learned Tribunal. In the reassessment proceedings the assessee contended that the loan taken was returned back during the subsequent assessment year and purpose of submitting the evidence was that any loan or advance deemed as dividend income, tax in one year was to be refunded back in the year in which it was repaid as per provisions of section 96(2). The plea was not accepted by the lower forums and the learned Tribunal on the ground that the period of limitation had expired. The Hon'ble High Court reversed the judgment by observing that the period of limitation provided in section 99 was not attracted because this period shall be relevant when refund is assessed in the assessment order for the particular year. The Hon'ble Court held that the refund available to the appellant was a consequential relief on account of addition made u/s 2(20)(e). The Hon'ble Court further held that the appellant was entitled to refund by way of consequential relief.
2003 PTD TRIB 605	66A	In this case limitation of action taken u/s 66A has been considered and it has been held that the limitation will run from the date of order sought to be revised, in which the error exist. Since in this case, error pointed out by to revise the assessment by invoking the jurisdiction on a order passed u/s 132/62 when the alleged error was in the original order under section 62, the appeal was allowed and it was held that the action is barred by time.
2003 PTD TRIB 622	80 D and 80C <i>Both</i>	In this case, the Departmental appeal was filed against the order passed by the CIT(A), wherein the learned CIT(A) directed the assessing officer to take into consideration amount of tax paid by the appellant u/s 80C at the time of working tax u/s 80D. <u>Turnover u/s 80C should also be included in the total turnover for the purpose of working of tax.</u> The Departmental appeal was dismissed.
2003 PTD TRIB 625	62	In this case, the assessee challenged the rejection of account on the ground that notice under Proviso to subsection (1) of section 62 was not served in accordance with law. The learned Tribunal accepted the contention after examining the case and on the basis of earlier judgments on the issue.
2003 PTD TRIB 634	52	It was argued in this case arising out of action u/s 52 that if the payment in the hands of recipient were ultimately adjudged not chargeable to tax, no order u/s 52 could legally be passed against withholding agent for the default on non-deduction of tax u/s 50(4). The learned Tribunal has not accepted the above contention and has ruled that provisions of section 50(4) are applicable when the withholding agent is a person as prescribed in that subsection and he makes payment for contracts, supplies or services rendered as prescribed. <u>The only situation in which the withholding agent need not deduct any tax is that when the recipient produces a certificate from the Commissioner to this effect. The withholding agent is not authorized to determine the chargeability of tax on the payments and then decide as to whether tax u/s 50(4) is to be deducted or not.</u> The only provision of law where chargeability of tax on receipts has been made basis for withholding tax is subsection (3) of section 50. Another submission was made that additional tax u/s 86 has to be worked out from the date of final order passed u/s 52 in consequence of set aside directions by the appellate authorities. The arguments was that the period of additional tax should be curtailed when the order remained set aside, the above contention has also been rejected.



CITATION	SECTION	ISSUES INVOLVED
2003 PTD TRIB 661	2(20)(e) and 80B	In this case, assessee being a contractor of a Private Limited Company obtained the loan, which was treated as dividend under the provisions of section 2(20)(e). The assessee filed appeal before the learned CIT(A), who confirmed the action u/s 2(20)(e), however, directed the assessing officer to treat this income as separate block u/s 80B. The Department filed appeal against the said judgment. The learned Tribunal after considering the definition of dividend and the provisions of section 50(6A) has confirmed the findings of learned CIT(A) that such dividend would be chargeable to tax u/s 80B.
2003 PTD TRIB.714		In this case, it has been ruled that action u/s 65 on the ground of value of a parallel property was not legally justifiable as the record did not indicate any definite information with regard to understand value of the property.
2003 PTD TRIB 720		In this case, it has been held that the learned Tribunal has the power to stay the re-assessment proceedings.
2003 PTD TRIB 720		In this case, action u/s 66A was taken as the assessee had not claimed depreciation allowance. The assessee's appeal was accepted on the ground that depreciation claim can only be allowed if the Department filed Reference Application which has been also dismissed on the similar reasoning.
2003 PTD TRIB.728		In this case, additional tax u/s 86 was originally charged. Subsequently the assessing officer enhanced the additional tax without issuing any notice u/s 156(2). The learned Tribunal accepted contention of the assessee, the further addition of tax under section 86 was deleted.
2003 PTD TRIB 731		In this case in a departmental Reference against the chargeability of section 80C on buy and lease-back transaction, it has been held that in view of amendment made subsequently in section 50(4) withholding of tax as had required on such transaction. The learned Tribunal has held that since the amendment was remedial legislation in view of the judgment of Supreme Court in the case of Shah Nawaz Ltd. reported as 1993 SCMR 73, the charge of 80C will not be chargeable in all the pending proceedings.
2003 PTD TRIB 735		In this case, value of the imported goods was declared by the assessee after exclusion of Sales Tax which was accepted which resulted into creation of refund. Subsequently, it was noticed by the assessing officer that the correct value of the imported goods was not declared. The learned tribunal, while deciding appeal held that Sales Tax and Customs Duty shall not be added in the value of imported goods for the purposes of section 80C.
2003 PTD TRIB 760 KHC		In this case, petitioner is a manufacturer engaged in the assembly of buses and trucks. In addition to the manufacturing activity, the petitioner was also doing trading activity being imported spare parts of the trucks and buses was supplying the same to various customers in their original shape without subjecting imported goods for any manufacturing process, sales tax was regularly paid on the imported goods which enjoyed exemption under the provision of Entry 33 of the Sixth Schedule to the Sales Tax Act, 1990 as it stood before amendment by Finance Act, 1997. The audit team of Sales Tax raised the issue in the Show Cause Notice, which was challenged in the Constitution Petition. The Department contention was that since the petitioner is a manufacturer, therefore, all the supplies made by of whether in respect of goods manufactured by it or not shall be liable to payment of Sales Tax. Rejecting the contention of sales tax department, the Hon'ble High Court held that language in Entry No. 33 of the Sixth Schedule shows that exemption has been allowed to the supplies made in Pakistan except made by the manufacturer.  In this case the Hon'ble High Court of Sindh has held that it is the cardinal principle of tax statute that an assessee is to be taxed on clear and unambiguous language and it there is any ambiguity or doubt, it is always to be resolved in favour of the assessee.
2003 PTD 777 KHC		It has been held that every judicial order should be speaking order.
2003 PTD TRIB. 835		In this case, definition of term "Perincuriam" has been examined by the learned Tribunal, while examining the case u/s 12(18).

CITATION	SECTION	ISSUES INVOLVED
		<b>Note</b> (The learned members are requested to read the judgment carefully as substantial provisions of law have been explained elaborately).
2003 PTD 890		In this case, valuation of imported goods u/s 25 of Customs Act was determined without any basis and material which was confirmed by Tribunal. The action was disapproved by Hon'ble High Court since determination was without any basis and material.  <b>Note</b> The learned Members are requested to read this judgment carefully with reference to valuation of imported good under the Customs Act.

### **WEALTH TAX**

2003 PTD TRIB 651	18 and 35	In this case, originally penalties were imposed under Wealth Tax Act u/s 18. Subsequently, the penalties were enhanced by rectifying the penalty orders which were challenged before the learned Tribunal and it was argued that conscious penalty orders were passed, as such, the jurisdiction u/s 35 was not legally assumed as no mistake apparent from record was detected. It was further argued that rectification could not be made on the pointation of audit authorities. The learned Tribunal accepting the appeal of assessee held that assumption of jurisdiction u/s 35 was not sustainable in law and restored the original penalty orders.
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The Members Assistance Sub-committee claims no responsibility to the correctness of the contents published. The information provided is non-exhaustive and readers are advised to refer to the respective taxation laws, documents/case laws cited for understanding the issue involved.