



# 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

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### SUMMARY OF CIRCULARS/NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
<b>INCOME TAX</b>			
Circular Letter No. 7(7)/8.Asst/2002	17.12.2002	Policy Guidelines issued for selection of cases for Total Audit by RCIT under Para 9(a)(ii) of SAS for Returns filed under Self Assessment. Scheme for 2002- 03.	21
SRO 659(I)/2002	28.09.2002	Agreement for Double Taxation Avoidance between Pakistan and Sultanate of Oman executed.	22
SRO 44(I)/2003	11.01.2003	Exemption to Profits & Gains of an Electric Power Generation Plant, withdrawn in respect of new Oil Fired Power Plants set-up on or after 22 <sup>nd</sup> October, 2002.	23
SRO 67(I)/2003	22.01.2003	Amendment in Rule 86 of Income Tax Rules, 2002, in respect of Prescribed qualification for registration as an Income Tax Practitioner.	24
SRO 248(I)/2003	05.03.2003	A new clause (22A) inserted in Part-IV of Second Schedule to the Income Tax Ordinance, 2001 to exempt the levy of Minimum Tax u/s.113 to a resident person engaged in the business of Shipping, who qualifies for application of reduced rate of tax on tonnage basis as final tax under clause 21 of Part II of the Second Schedule.	25
SRO 253(I)/2003	07.03.2003	Clause (43D) inserted in Part – IV of Second Schedule to exempt M /s. Overseas Trading Corporation Karachi from withholding tax under S.153 on payments received for supply of Petroleum products.	26
SRO (I)/2003	07.03.2003	Draft issued for proposed Amendments in Income Tax Rules 2002, in respect of procedure for approval of Non-profit Organizations and related formalities.	27
<b>SALES TAX</b>			
Instruction No.4/2003	10.02.2003	De-registration possible for certain Commercial Exporters, including Exporters of hand-knotted carpets, who do not want to avail the facility of zero-rating on the export of taxable goods.	28
Instruction No.5/2003	18.02.2003	Input Adjustment on Electricity Bills by Registered Cotton Ginning Factories also available for period prior to December 2002, on fulfillment of specified qualifying conditions.	29
Instruction No.6/2003	04.04.2003	Cases wherein L/C is established or Sale Proceeds are remitted from the Head Office / Regional office of the buyer (having multiple offices in various countries) may be treated as sale proceeds received from the country to which the goods have been exported.	30
Instruction No.7/2003	15.04.2003	Payment against a supply made in kind is allowed to facilitate the tax- payers, if payments in kind is by transferring landed property on submitting attested copy of Mutation Deed, showing transfer between two registered persons.	31



SRO 644(I)/2002 [2003-87-TAX-24(ST)]	20.09.2002	Exemption granted to additional Tax levied by Sales Tax Dept. on Pak Suzuki Motor Co. Ltd., for adjustment of Sales-tax paid on parts and components used in manufacture of exempt vehicles, supplied under Yellow Cab Scheme, during November 1990 to October 1992, for reasons specified and subject to conditions as spelt out in notification.	32
SRO 130(I)/2003 [2003-87-TAX-35(ST)]	31.01.2003	Amendments made in the Collection and Payment of Sales Tax on Natural Gas Rules, 1999, whereby Registered Consumers shall be entitled to claim input tax adjustment against such bill, on fulfillment of specified conditions.	33
SRO 168(I)/2003 [2003-87-TAX-36(ST)]	17.02.2003	Amendments made in SRO 350(I)/2002 dated 15.06.2002 (Transfer of Registered persons to LTU), as empowered under Rule 6(1) of the Registration, Voluntary Registration and De-Registration Rules, 1996.	34
SRO 203(I)/2003	27.02.2003	Amendments in Sales Tax Refund Rules, 2002, for allowing Sales Tax Refund claims, on furnishing of prescribed Bank Guarantees, by Commercial Importers, in lieu of Bank Credit Advice, for refund claims filed upto 30.06.2003.	35
SRO 267(I)/2003	19.03.2003	Sales Tax Exemption allowed to Fertilizer Plant & Machinery, not manufactured locally, imported by M/s. FFC Jordan Fertilizer company prior to 17.01.1998 for setting up the fertilizer plant, on fulfillment of specified conditions.	36
SRO 279(I)/2003	19.03.2003	Additional tax levied by Sales Tax Dept. on Pakistan State Oil Co Ltd., Karachi, fully exempted as a special case, for the reason that PSO is a Govt. controlled public sector company and principal amount of sales tax was voluntarily deposited after issuance of the audit observation.	37
SRO 320(I)/2003	03.04.2003	Specified quantity of Sugar purchased and exported by Trading Corporation of Pakistan (TCP), shall be charged to tax @ zero percent, on fulfillment of qualifying conditions.	38
SRO 344(I)/2003	14.04.2003	Additional Tax and Penalty levied by Sales Tax Department on M/s. Agha's Super Market, exempted by CBR, as a special case, as recommended by the Dispute Resolution Committee, constituted by the Federal Govt. to alleviate hardship cases.	39
Sales Tax General Order NO.1/2003	27.02.2003	Format of Bank Guarantee prescribed for furnishing of bank guarantee by Commercial Exporters in terms of SRO 203(I)/2003, dated 27.02.03, if they want to claim Sales Tax Refunds before the issuance of Bank Credit Advice (BCA) confirming remittance of Sales proceeds of exported goods.	40

### CORPORATE LAW

Circular No. 3 of 2003	23.01.2003	Consent on prescribed Format of the proposed Director/Chief Executive, is also now to be filed with application for appointment of Director/Chief Executive in the Modaraba Companies, as required in terms of Circular No.7/2000 dated 25.05.2000.	41
Circular No.4 of 2003	20.02.2003	Listed companies are directed to comply with the amendments made by SRO 66 (I)/2003 dated 22.01.2003, regarding transfer pricing in the Fourth Schedule, for the financial statements covering periods beginning on or after 01.01.2003.	42
Circular No.5 of 2003	21.02.2003	In order to curb Anti-money Laundering, following two additional conditions have been imposed by SECP for conduct of business by Modarabas, which shall also be deemed to be part of the conditions of the certificate already granted for authorization to float a Modaraba: -  (a) All the Modarabas shall accept deposits from an investor only after an account has been opened in the investor's name using an account opening form.  (b) Every payment or receipt exceeding Rs. 50,000/- shall be made through cross cheque effective July 1, 2003	43
Circular No.6 of 2003	21.02.2003	SECP has directed all NBFIS to take following measures, to combat the Money Laundering practices in the Corporate Sector -	44



- (a) All NBFI'S shall accept deposits from an Investor only after ensuring that an account has been opened in the Investor's name, using an account opening form, which will be developed in consultation with the Commission.
- (b) Every payment or receipt exceeding Rs. 50,000/- shall be made through crossed cheque effective July 1, 2003

Circular No.7 of 2003	27.02.2003	Modaraba Companies while submitting documents as prescribed in Circular No.7/2000, and No. 3/2003 for seeking approval of appointment of Directors, are now also required to submit prescribed checklist, alongwith other requisite documents.	45
Circular No.8 of 2003	28.02.2003	All NBFI'S are also now required to submit prescribed Checklist with other required documents, at the time of seeking Commission's approval for Appointment of Directors.	46
Circular No.9 of 2003	19.03.2003	General relaxation of further one month allowed to listed companies to circulate their second quarter accounts with limited scope review by Statutory Auditors within a period of two months of the close of second quarter, as required under S.245 of Companies Ordinance, 1984.	47
Circular No.10 of 2003	10.04.2003	Fresh License(s) to be applied under S.282 of the Companies Ordinance, on or before 15.05.2003, in prescribed form and with prescribed Fee by all Existing Non-Banking Finance Companies, engaged in specified forms of businesses.	48
Circular No.11 of 2003	21.04.2003	Requirement of filing of Quarterly Return with SECP by Listed Companies for incorporating provisions relating to transfer pricing, waived for the quarter ended March 31, 2003.	49

#### SYNOPSIS OF IMPORTANT CASE LAW

CITATION	SECTION	ISSUES INVOLVED
<b>INCOME TAX</b>		
(2003) 87 TAX 148 TRIB	66A & 17	In a case of a bank, the action u/s 66A was taken on the ground that income arising out of Interest from Government Securities should be taken on accrual basis not on receipt basis, since assessee was maintaining the books on accrual basis. It was argued before the learned Tribunal that order of DCIT was neither erroneous nor prejudicial to the interest of revenue as both the condition laid down in section 66A should be fulfilled simultaneously. It was further argued that there was no prejudice caused since the interest income has been taxed in subsequent year. It was also argued on the strength of judgment reported as 22 ITR 13 that the words used in Section 17 are "receivable" which means received in actual. The learned Tribunal annulled the order passed u/s 66A on the ground that no prejudice has been caused as the income u/s 17 has been taxed in subsequent years and IAC has not deleted the income in subsequent years, which amounts to double taxation of the same income. ✓
(2003) 87 TAX 136 TRIB	59 & 66A	In this case, action u/s 66A was taken for the reason that since "tax paid" by the assessee for the assessment year 1997-98 under Self Assessment Scheme was less than the tax paid for the Assessment year 1996-97, which was requirement of the Scheme, the IAC held that on this ground the return did not qualify under Self Assessment Scheme and "Tax Paid" is to be taken for comparison of tax purposes and "Not" for income to qualify under SAS. The learned Tribunal examined the issue and after examining the provision of the Scheme contained in Para 2(b) of Circular 5 of 1997 held that Para 2(b) speaks of Tax Paid and Tax Payable which cannot be interpreted to exclude the tax payable under presumptive tax regime for the earlier years. The learned Tribunal further observed that it applied to all kinds of taxes paid by an assessee either u/s 80B, 80C or 80D. Similarly for comparison purposes the tax payable for 1996-97 shall be grossed up by excluding tax payable under any of the above sections as well as surcharge payable by the said assessee during the assessment year 1996-97. The learned Tribunal confirmed the action u/s 66A. 17.



CITATION	SECTION	ISSUES INVOLVED
(2003) 87 TAX 129 TRIB	62	<p>In this case, the learned Tribunal has very minutely examined the issue of rejection of accounts with regard to issuance of notice under proviso to sub-section (1) of Section 62 and have elaborated the procedure of issuing notice u/s 62 as follows -</p> <ol style="list-style-type: none"> <li>1 Issue of notice to assessee pointing out the defects noted in the books of accounts</li> <li>2 To provide an opportunity to the assessee to explain his point of view about such defects in the accounts; and</li> <li>3 To record such explanation and the basis of computation of total income of the assessee in the assessment order.</li> </ol> <p>Further in this case, assessment was set aside on the point of defect of notice u/s 62. The learned Tribunal, accepted the contention that assessment should have been annulled. <u>Members are requested to read this important judgment on the point of Notice u/s 62.</u></p>
(2003) 87 TAX 104 TRIB	62, 63	I.T-30 and demand notice cannot be equated with passing of an assessment order in writing u/s 62 or 63 of the Income Tax Ordinance, 1979. Reliance has been placed on case law reported as 1992 PTD 347 (S.C. Pak), 1987 PTD 249 (Kar H.C.).
(2003) 87 TAX 89 TRIB	85, 52	In this case, the learned Tribunal has held that for the purposes of invoking action u/s 52 firstly the assessing officer has to proceed before the end of the financial year and secondly on inspection of books and on the failure of assessee, he can proceed within three year prior to the income year for which the assessing officer has issued notice u/s 61 for assessment. Members are requested to read this important judgment on the point of Notice u/s 52.
(2003) 87 TAX 84 TRIB	52A & 86	It has been held by learned Tribunal that provisions of Section 52 and 52A are not same. It has been further held that additional tax u/s 86 has no nexus with the proceedings u/s 52A.
(2003) 87 TAX 80 TRIB	12(18A)	In this case, the loan was not repaid, however the creditor gifted that amount to the assessee. The learned Tribunal approved the deletion made by the learned CIT(A), by holding that assessee is allowed to minimize his liability of tax or avoid tax through legal means.
(2003) 87 TAX 76 TRIB	66A	Action under Section 66A cannot be taken on subsequent enquires.
(2003) 87 TAX 60 TRIB	66A & Third Schedule	In the fact and circumstances of case, where company is involved in the sale of liquid Petroleum gas, it has been held that Cylinders used in the process comes within the definition of plant. It was further directed by the learned Tribunal, that <u>issue of taxability of deemed income resulting from lease buy back arrangements should be examined keeping in view decision reported as 1999 PTD 14 (Trib) and ITA No 624/LB/99 dated 20.1.2000.</u>
(2003) 87 TAX 52 TRIB	66A	It has been held by the learned Tribunal that provision of Section 66A cannot be invoked on recommendations of Audit Department. It has been further held that the provision of law has to be interpreted and applied in substance and not in form.
(2003) 87 TAX 23 TRIB	66A, 52 & 24 (c)	In this case, the assessee had not deducted tax as required under section 50. During the assessment proceedings, failure to deduct tax was detected and order under section 52 was passed and tax was recovered. However, since the tax was recovered by DCIT no disallowance was made on this account. The IAC invoked the provisions of Section 66A and disallowed the expenditure under section 24(c). The learned Tribunal, however, disapproved the action under section 66A for reason that since tax has been recovered subsequently u/s 52 therefore there means no further default hence no disallowance under section 24(c) can be made by the IAC u/s.66A.



CITATION	SECTION	ISSUES INVOLVED
(2003) 87 TAX 19 TRIB		In this case, addition u/s 13(1)(a) was made where no books of account were admittedly maintained. The learned Tribunal, therefore, held that 'addition u/s 13(1)(a) is unsustainable in law. Further, the Tribunal did not subscribe to the view of CIT(A) that by quoting incorrect provision of law, the addition cannot be held to be tenable in law for the simple reason that the legislature has intentionally catered 6 eventualities in section 13 of the Income Tax Ordinance i.e. (a), (aa), (c), (d), and (e) in order to deem the income of the assessee u/s 13. <u>It has been held that otherwise only a single section 13 could have been introduced by the legislature to cover up all the situations referred in those clauses.</u> It has been held that this was <u>not a case of quoting wrong clause of Section 13</u> but was that of <u>applying incorrect law</u> , which act of the assessing officer was certainly unlawful.
(2003) 87 TAX 3 TRIB	13(1)(aa)	In this case, issue regarding addition u/s 13(1)(aa) was set aside by the Tribunal and application for rectification was filed on the ground that the learned Tribunal while deciding the case has inadvertently given no findings on the point of approval for making addition u/s 13(1)(aa), which was the subject matter of the appeal. It was brought to the notice of the Tribunal that the DCIT sought permission from the IAC, whereas, he was under legal obligation to seek approval. The assessee contented on the strength of judgment reported as 2000 PTD 3788 decided by the Lahore High Court that approval by IAC was not <u>procedural but a condition precedent for exercise of jurisdiction to make addition u/s 13.</u> The learned Tribunal relied upon the case reported as (1994) 70 Tax 9 Tribunal, wherein the learned Tribunal differentiated the meaning of the words <u>approval and permission.</u> Keeping in view of the above distinction Miscellaneous Application of the assessee was accepted and the order passed earlier setting aside the addition was modified and addition was deleted by holding that <u>words Approval and Permission have different meaning and in this case, IAC allowed permission which action is not tenable in the eyes of law.</u> The learned Tribunal further observed that <u>when law requires one thing to be done in a particular manner, it should be done in the same manner.</u>
2003 PTD 1 (H.C. LHR)	32	In this case, the Hon'ble Lahore High Court after examining the provisions of Central Excise Act, 1944 has approved the decision of learned Tribunal in which it was held that the Central Excise Duty paid was debitable to the manufacturing and trading account.
2003 PTD 341 (TRIB)		Assessment finalized before the date of fixation of hearing was annulled by the CIT(A) which was duly approved by the learned Tribunal.
2003 PTD 346		In this case, the assessee was charged with penalty under Section 108(b) for failure to file statement under Section 142. The penalty was worked out after including initial penalty of Rs. 2,000 for each default of statement and Rs. 200 per day. After considering the provisions of law, the learned Tribunal held that assessing authorities cannot proceed to levy initial penalty as well as continuing penalty in the same order and it has been held that they must provide another opportunity to the assessee <u>before levy of penalty for continuing default.</u> In this case, it was argued that there was no deliberate or willful default since the assessee was unable to find such persons to do business who were willing to suffer deduction of tax. Such argument was held to be reasonable cause and the Hon'ble Tribunal held that there was not deliberate or willful default on the part of assessee.
2003 PTD 577 (H.C. Kar)		The Hon'ble High Court has affirmed the view of the learned Tribunal that under the Wealth Tax Act, 1963 a Trust is not a Company. It has been further held that in taxing statute one has to look merely at what is clearly stated. There is no room for any intendment. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, one can only look fairly at the language used. It has been held that it is established principle of the interpretation of fiscal statute that, a tax on any person is to be levied by clear and unambiguous words and the expressions used in the charging sections are not to be stretched by any process of interpretation so as to bring a person within the tax net, not falling under the clear and plain language of the statute. Another rule of interpretation has been highlighted, that the definition given in a particular statute are to be employed for the purpose of the said statute only until the definitions are adopted by any other statute through the legislation by incorporation or reference.



CITATION	SECTION	ISSUES INVOLVED
2003 PTD TRIB 494	15, 7	In this case the learned Tribunal while deciding Miscellaneous Application has <b>already pronounced</b> very clearly elaborated the issue of Capital Gains and Revenue Gains in the case of Banking Companies, after considering most of the decisions on the issue. It has been held that a banking company may purchase the securities for the purpose of dealing in securities or for the purpose of investment. The intention in this regard can be determined by examining the circumstances in which a security is purchased. It has been held that obviously when security is purchased in order to meet with the statutory requirements of Section 13 of the Banking Companies Ordinance, 1962 then it is purchased as an investment, when ever such securities are disposed of, the resultant gain or loss there from will be computable as Capital Gain or loss because these securities being asset of the company satisfy the definition of Capital asset as given in Section 2(12) of the Income Tax Ordinance, 1979. If on the other hand the securities were purchased for the purpose of dealing in them, then, if matured, the income received there from is to be computed as interest from Government Securities and the loss or gain on sale is revenue loss or gain because these securities were purchased as stock in trade.
2003 PTD TRIB 463		In this case, the foreign employees of a non-resident company engaged in the business of oil exploration and production in Pakistan, claimed exemption under Section 3B of the regulation of Mines and Oil Fields and Mineral Development (Government Control) Act, 1948 read with Clause 13 of the said Act and Regulation, the department taxed the salaries. However, the Learned Tribunal after examining the provisions of law, held that foreign nationals employed by the company being licensee in respect of exploration of Oil were entitled to exemption for the period claimed by them.
PLD 2003 QUETTA 11		Question of jurisdiction being a question of law could always be raised by any party at any stage including the appeal. Court itself is required before proceeding with the case to examine, whether it has jurisdiction in law to proceed or not? Merely because a party to the proceedings has not taken any objection to the jurisdiction out of ignorance or for want of proper advise shall neither debar a party from taking such objection at the appellate stage nor the silence of a party or even waiver shall confer jurisdiction of a Court not vested in it by law. Question of Jurisdiction goes to the very root of the case and renders the entire proceedings coram non judice thereby vitiating the entire proceedings and making the judgment illegal and void.
PLD 2003 SC 191		Contract of Guarantee, its origin, history and connotation explained by Hon'ble Supreme Court.
PLD 2003 LHR 125		Order is to be read as whole and not in piece meal.
PLD 2003 LHR 115		When law requires a particular thing to be done in a particular manner, it can only be done in that manner and in no other manner particularly when it may affect any of the rights of person
2003 SCMR 104		Justice should not be done, but manifestly and undoubtedly should be seen to have been done.
2003 SCMR 132		Transfer of shares of Private Limited Company in any manner transferred otherwise as provided in the Articles of Association would be invalid.
2003 SCMR 41		Possession essential ingredient to constitute a valid gift
PLD 2003 SC 191		Leave granting order passed by Supreme Court does not lay down a law to be followed.
2003 SCMR 265		Exemption from whole of Custom Duty also includes the Regulatory Duty therefore exemption will be equally apply to regulatory duty.
(2003) 87 TAX 47 (H.C. KAR)	66A	In this case, the assessee derived income from salary from a company and commercial imports. The action was taken under section 66A by the IAC holding that assessee was not whole time director; hence he was not entitled to concession under Rule 3(2)(c). The learned Tribunal did not approve the action and held that assessee was whole time employee of one company. The Hon'ble High Court of Lahore affirmed the view of learned Tribunal by relying upon the judgments on the same issue reported as 1988 PTD 563 and 2000 PTD 497.



CITATION	SECTION	ISSUES INVOLVED
2003 PTD 307 TRIB	131	In this case, the learned Tribunal after examining the case has held that the provisions of Section 131(4) are mandatory in as much as these bars admitting the evidence except in special circumstances. It was held that since in the case, the assessee has not mentioned such special eventualities and further the CIT(A) ignored the comments filed by the DCIT, the case was remanded.

### WEALTH TAX

(2003) 87 TAX 160 TRIB	5 & RULE 8(3)	The words "owned and occupied by the assessee for the purpose of his own residence" have inbuilt characteristics of apportionment of the house in two heads i.e. self occupied and non-utilization of house for residential purpose. In this case assessee declared a house as self occupied which included a portion which was used as clinic. The learned Tribunal after examining the provisions of Clause 5(1) of the Second Schedule to Wealth Tax Act, 1963 held that a portion of house used otherwise than for residential purposes, no matter whether any division of the house has taken or not, the assessee shall not be entitled to the benefits of exemption to the extent the house is in utilization for professional purposes. It further held that clinic does not come within the definition of shop. The full bench decision reported as (2000) 81 TAX 80 Trib relied upon.
(2003) 87 TAX 141 TRIB	17B, 5	In this case, the action u/s 17B was taken on the ground that assessee had claimed exemption of Foreign currency remittance, where the particulars of remitter had not been disclosed. It was argued that no such conditionality was attached for foreign Currency remittances. The learned Tribunal annulled the Order passed u/s 17B after examining the provisions of Section 5(1)(xv), provisions of Economic Reforms Act, 1992 and held that no such condition prescribed under the law.
(2003) 87 TAX 49 TRIB	2(e)(ii)	In this case, a society received nominal amount on account of booking of open plots and grounds which were received for providing ground for sports and marriage ceremonies. It has been held by the learned Tribunal, that charge on net assets of a property held by an AOP is only where such property is held for the purpose of the business of letting out. It has been further observed that society was neither involved in the business of letting out nor as it has been formed for that purpose. Accordingly, no wealth tax is leviable.
(2003) 87 Tax 32 (H.C. Lah.)	17B	In this case, it has been held that section 17B, was introduced by Finance Act, 1992, therefore it could not be invoked in the assessment year 1991-92.
2003 PTD 52 SC 2003 SCMR 271	17B	Where any statute effects and substantive right, it operates prospectively unless by express enactment of necessary intendment retrospective operation has been given. The Hon'ble Supreme Court granted leave to appeal to examine inter alia the question whether Section 17B of the Wealth Tax Act, 1963 would be applicable retrospectively or otherwise.
2003 PTD 319 (TRIB)	14C	It has been held that tax paid u/s 14C of the Wealth Tax Act, 1963 is in the nature of advance tax and adjustable against final charge of tax.
2003 PTD 535 (TRIB)	2 & 3	In this case, the learned Tribunal has held that there was no charge of tax on AOP for the assessment year 1997-98.

### SALES TAX

2003 PTD (TRIB) 29 C.E.S.T.APP.TRIB.		The Sales Tax department issued a show cause on the basis that the assessee was allegedly involved in purchasing "Flying invoices" with a view to get refund of input tax, while the assessee bought cloth from various unregistered dealers/weavers/commission agents without supporting invoices from them and after fictitiously making entries in the record about the purchases of yarn from different suppliers, illegally claimed refund. The Hon'ble Tribunal while deciding the issue has explained that Flying invoices and paper transactions having no link with actual transactions they refer to and nomenclature assigned to them seems to be correctly reflective of what they actually are, Flying invoices are those invoices which are registered person, of which credit/ refund is claimed, which is actually the goods and purchased from some other person.
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CITATION	SECTION	ISSUES INVOLVED
2003 PTD 505		The Hon'ble Supreme Court of Pakistan while examining the Provisions of The Manufacturing In Bond Rules, 1997 Customs Act, Sales Tax Act and Central Excise Act observed that it is a settled principle that a statutory rule cannot enlarge the scope of the section under which it is framed and if a rule goes beyond what the section contemplates, the rule must yield to the statute and if they are inconsistent they shall be invalid.
<b>DECISION OF FEDERAL TAX OMBUDSMAN</b>		
2003 PTD 9 FTO	INCOME TAX ORDINANC E, 1979	The Hon'ble FTO advised the CBR to follow the ratio of Central Insurance Company's case (1993 SCMR 1049) and to abstain from issuing directives based on their interpretation of laws. Further it has been observed that CIT has no authority under the law to withdraw the exemption certificate with retrospective effect.
2003 PTD 46 FTO	100	Section 100 excludes from its purview a set-aside order, therefore, no refund is to be considered as due as result of setting aside of an assessment.
2003 PTD 335 FTO		In this case, the assessee filed declaration under Tax Amnesty Scheme, 2000, which was intended to be reopened. It has been held by the learned FTO that since the declaration was filed prior to the Show Cause Notice and notice under Section 65, the declaration was valid. The Hon'ble FTO by placing reliance on judgment of Hon'ble High Court of Sindh in CP No.636 and 640 of 2001 and examining the Circular No.4 of 2000 has held that preliminary examination provided under Para 10(1) of the said Circular for no stretch of imagination would include fishing and roving enquiry and scrutiny required while completing the assessment under Section 62. The declaration filed under Tax Amnesty Scheme, 2000 has been provided immunity in Para 8 of Circular No.4 of 2000 and even normal assessment under Section 59 or 62 cannot be reopened on the basis of mere presumption without having substantial evidence regarding quantum of income declared. Such presumption would not constitute definite information for the purpose of Section 65. The Hon'ble FTO Directed the Department to accept the declaration made as it has become final.
2003 PTD 342		In this case, the Hon'ble FTO has held that by virtue of provisions of Section 99(3), additional compensation under Section 102 will operate from the date of payment of principal amount.
2003 PTD 352 (FTO)		In this case, it was contended by the Departmental authorities before the Hon'ble FTO that that Commissioner desired to vacate the impugned assessments but found himself helpless because there is no corresponding provision for Section 138 of the repealed Income Tax Ordinance, 1979 in the new Income Tax Ordinance, 2001. It has been held by the Hon'ble FTO that wide powers are available under Section 122 which can be invoked to remedy the Situation.
<b>CUSTOM ACT</b>		
2003 PTD 14		In this case Customs authorities at Karachi received information that consignment which was meant for transshipment to Faisalabad, contravened the law and action was taken by Custom officials at Karachi. Question pertaining to goods meant for transshipment to Dry Port was agitated and the Hon'ble High Court held that action of the Custom officials at Karachi was legally unsustainable.
2003 PTD 562 HC Peshawar	194B	Appeal before the High Court against the order of Tribunal u/s 194B of the Customs Act could be filed for determination of Question of Law.
2003 PTD 552 HC Karachi	32	In this case, the Hon'ble High court observed and found that Custom department had invoked the provision of Section 32 of the Customs Act on the basis of Customs House laboratory, where as the importer of goods had relied upon the laboratory reports of PCSIR and HEJ Research Institute both independent institutions. It was held that possibility of bias in the report by Customs Laboratory cannot be rule out.

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.