



ITBAK's

News & Views

Library and News & Views Committee
Mr. Haider Ali Patel (Convenor)
Mr. Iqbal Salman Pasha
Mr. Anwer Kashif Mumtaz
Mr. Ali A. Rahim
Mr. Arshad Siraj Memon
Ms. Yasmeen Ajani
Mr. Asif Ali Khan
Mr. Kazi Anwar Kamal
Mr. Rehan Siddiqui
Mr. Nadeem Iqbal
Syed Hassaan Naeem

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

NV # 01/2003

January - March, 2003

SUMMARY OF CIRCULARS/NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
INCOME TAX			
Circular No.1 of 2003	31-01-2003	Clarified that instructions issued through CBR Circular No.6 of 2002 dated 04.05.2002 for acceptance of Exemption Certificates issued by competent Tax Authorities of Pakistan and AJK and credit for tax paid are equally applicable to period even prior to 04.05.2002.	01
SRO No.935(I)/2002	21.12.2002	Proccol-2 executed on 02.05.2002 between Pakistan and Denmark for certain amendments in ADTA, made effective from the dates as mentioned in said Protocol.	02
SRO No.936(I)/2002	18.12.2002	ADTA between Pakistan and Syrian Arab Republic issued and made effective retrospectively from 01.05.2002.	03
SALES TAX			
Instruction No.02/2003	21.01.2003	Persons liable to be enrolled under the Turnover Tax Regime under S.3 of the Sales Tax Act, can be compulsorily enrolled in terms of S.3A(4) read with S.19.	04
Instruction No. 03/2003	06.02.2003	New Sales Tax Audit criteria issued for Custom Agents, who deposit sales tax below the prescribed minimum benchmark, level per document filed.	05
SRO No.36(I)/2003	09.01.2003	Registration of M/s. Riaz Textile Mills (Pvt.) Limited, Sheikhpura transferred from Collectorate of Sales Tax & Central Excise, Rawalpindi to Lahore, under power vested in Rule 6(1) of the Registration, Voluntary Registration and De-Registration Rules, 1996.	06
Press Report		Draft of Registration and De-Registration Rules, 2003 issued.	07
Sales Tax General Order No. 06 of 2002	26.12.2002	Procedure prescribed in respect of documents to be filed on or after 16.01.2003 for payment of Sales tax on services provided by Customs Agents under the Provincial Sales tax Laws.	08
CORPORATE LAW			
Circular No.17 of 2002 (Earlier missing)	18.12.2002	Directives issued to all Non-Bank Finance Companies (NBFCs) engaged in soliciting investments/deposits through issuance of Certificates of Investment (COIs) or Certificates of Deposit (CODs) to submit the specified current information to SECP.	09
Circular No.19 of 2002	27.12.2002	Listing Regulation No.37 of Karachi Stock Exchange requires Listed Companies to appoint only those firms of Auditors, as their External Auditors, who have been given a satisfactory rating under the Quality Control Review Program of the ICAP, as per list issued by ICAP and circulated by SEAP	10

Circular No.1 of 2003	23.01.2003	Clarified that Sole Proprietor Chartered Accountants cannot be appointed as auditors by their business names and shall be appointed in their personal names only, whereas auditors can be appointed by their business name, if they are practicing as a Firm of Chartered	11
Circular No.2 of 2003	23.01.2003	Clarification about re-classification of Revaluation Surplus in respect of investment Properties, at the time of first application of IAS 40.	12
SRO 825(I)/2002	22.11.2002	Responsibility of Commissioners specified to oversee the Working of Various Divisions/ Wings of Commission.	13
SRO 18(I)/2002	03.01.2003	Delegation of Powers and functions to the Executive Director (Specialized Companies Division), in respect of certain relevant statutory provisions applicable to Non-Banking finance Companies (NBFCs).	14
SRO 45(I)/2003	13.01.2003	Directives for treatment of Surplus on Revaluation of Fixed Assets under S.235, in order to ensure consistency in compliance with the requirements of IAS 16 – Property, Plant and Equipment and IAS 12 Income Taxes (Revised).	15
SRO 49(I)/2003	15.01.2003	Third Schedule of Companies Ordinance, 1984 substituted, to simplify formats of Form – A Annual Return of Company having Share Capital and Form - B Annual Return of Company not having Share Capital.	16
SRO 50(I)/2003	16.01.2003	Delegation of further powers and functions under the specified provisions to Executive Director (Enforcement & Monitoring) in case of Listed Companies and Executive Director (Company Law Administration) in case of companies other than Listed Companies and powers to Registrar (Headquarters) and Addl.Registrar of Companies, Karachi/Lahore.	17
SRO 64(I)/2003	13.01.2003	Draft of Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2002, issued.	18
SRO 66(I)/2003	22.01.2003	Certain amendments made in Fourth Schedule, in respect of Disclosure requirements in Financial Statements of Listed Companies.	19
Press Reports	08.02.2003	Directives issued by SECP to the Management of Stock Exchanges for Strengthening Broker's conduct of business in order to safeguard public interest, prohibit unfair trade practices and inculcate good governance in business	20

SYNOPSIS OF IMPORTANT CASE LAW

CITATION	SECTION	ISSUES INVOLVED
INCOME TAX		
2002 PTD(Trib) 3039	136(1), 66A, 62/135, 50(4) and 50(5)	<p>While rejecting the reference filed by the department, the learned ITAT has decided the following questions as under:</p> <ul style="list-style-type: none"> The assessment under Section 62/135 cannot be revised under Section 66A of the Ordinance being the issue which has already been the subject matter of appeal before the CIT(A) and the ITAT. The question of claiming credit of tax deduction under Section 50(4) or 50(5), is a question of fact and not of law. If the imports have been made in the name of the assessee, the credit of tax deducted and paid at source under Section 50(4) and 50(5) will go to the assessee.

CITATION	SECTION	ISSUES INVOLVED
2002 PTD (Trib) 3047	66A, 13(2), 59(1), Wealth Tax Rules, Rule 8(3)	<p>Action under Section 66A of the Ordinance cannot be initiated on the basis of any subsequent inquiries/event/ proceedings or evidence regarding any assessment made subsequently under any other law.</p> <p>Basis of valuation of property as defined in Section 13(2) of the Income Tax Ordinance, 1979 and Wealth Tax Rule 8(3) are quite different.</p>
2002 PTD (Trib) 3072	12(18A)	<p>Section 12(18A) can only be invoked after the expiration of period of five years from the end of income year in which loan was first taken or June 30, 1994, whichever is later.</p> <p>Section 12(18A) cannot be invoked where a creditor legally waives his amount of loan or treat the outstanding amount as gift to a debtor. Therefore, there is no restriction or any encumbrance on a right of creditor to waive his loan or outstanding amount.</p>
2002 PTD (Trib) 3107	62, 132, 65, 59(1) 13 and Rule 207	Without having definite information or material evidence, assessment cannot be re-opened or re-appraised.
2002 PTD (Trib) 3118	66A, 62, 24(c), 50(4), 52 & 156	Once the Income Tax Department taxed certain amount of payment under Section 52 of the Ordinance and the assessee subsequently has also paid the said amount under Section 52 of the Ordinance, then the same sum cannot be subjected to tax again under Section 24(c) of the Ordinance for the same reason that assessee has failed to deduct tax under Section 50(4) of the Ordinance. It would tantamount to a double taxation which is not allowed under the Scheme of Income tax as applicable in Pakistan.
2002 PTD (Trib) 3123	66A, 85 & 59(1)	Proceedings under Section 66A of the Ordinance can not be invoked in the circumstances where instead of a written order, only IT.30 form was issued. Therefore, on the basis of IT.30 form which is not a substitute of an order, the invocation of Section 66A is without lawful jurisdiction.
2002 PTD (Trib) 3129	136	<p>Legal issue; if can be initiated at any appellate level even though not agitated before the lower forums, where no further enquiry or investigation of facts is required,</p> <p>When the matter is pending before the higher appellate forum, no proceedings can be initiated by the assessing officer.</p>
86 TAX 225 (Trib)	66A	Delay in issuance of Refunds created on the basis of assessments framed as per law cannot be justified on the basis of invocation of action under section 66A which has been initiated as a desperate attempt to find faults in the case and thereby hinder issuance of refunds. Submissions made by the appellant were not dislodged as to make out a clear case of the assessments being erroneous due to which prejudice to the revenue would have been caused. To cure discrepancies omitted during assessment proceedings more or less amounts to change of opinion.
86 TAX 235 (Trib)	66A, 80D	Selling of goods on behalf of the company (principal) cannot be held supplies by the distributor for the purpose of "turnover" under section 80D. Turnover is a wide connotation and it includes sales, commission receipt, agency commission received as distributor for someone etc.
86 TAX 255 (Trib)	102, 103, 104(2)	<p>Refund created in the subsequent year cannot be adjusted against a non-existent demand.</p> <p>A state functionary cannot be allowed to circumvent and defy a mandatory provision of law to the detriment of a taxpayer. A relief granted by legislature cannot be taken away by a state functionary who is required to execute the law as enacted and not to distort the law at his discretion fraught with malafide.</p>
86 TAX 262 (Trib)	Para CCC(i)(a) of First Schedule	It is the value of the contract which is material for charge of tax under section 80C @ 5% or 6%, notwithstanding the amount of payments received in respect of that contract or in respect of receipts from the same payer relating to different contracts. The word contract has been used in singular.

CITATION	SECTION	ISSUES INVOLVED
86 TAX 266 (Trib)	66A, 80C	<p>The council of the appellant contended that section 66A has entrusted powers to the IAC to call for and examine the assessment records and initiate action on his own accord if he finds the order of the DCIT erroneous and prejudicial to the interest of revenue and not on the findings of any other authority whereas proceedings were initiated on receipt of Inspection / Audit report from Director General Audit.</p> <p>The learned Tribunal being convinced held that the IAC's order under section 66A was made without lawful jurisdiction.</p>
86 TAX 271 (Trib)	12(5), 80AA	<p>Mere collection of a fee for use of a standard facility provided to all those willing to pay for it does not amount to the fee having been received for technical services. Reliance placed on (2001) 251 ITR 53.</p> <p>Fee paid for receiving and transmitting internet signals by using facility of satellite is not fee for technical services but commercial profits.</p> <p>Phraseology in explanation to section 12(5) "<i>including the provisions of the services of technical or other personnel</i>" is not an exhaustive explanation but is an inclusive explanation which means that not only the provisions of services of technical personnel but other types of technical services can also be treated as fee for technical services where technical personnel are not deputed in Pakistan.</p> <p>Service and fee for technical services – discussions in the light of dictionary meanings and case laws.</p> <p>Rule of 'stare decisis' – interpretation, which has been consistently given by judicial authorities. Interpretation if not opposed to general principle of law, should not be departed from in absence of any compelling reason to contrary. It is equally important to remember that there is need for flexibility in the application as law cannot stand still nor can we become mere slaves of precedents.</p>
86 TAX 286 (Trib)	14(1), 34, 37, Clause (4) of Para A of Part IV of First Sch.	<p>Before applying the First Schedule, total income is to be computed in accordance with the provisions of law contained in Chapter IV of the Ordinance. When capital loss is not allowed to be set off against income under other heads, then the total income will not contain any portion pertaining to capital gains and there would, therefore, practically be no applicability of clause (4) of Para A of Part IV of the First Schedule.</p>
86 TAX 290 (Trib)	52, 86, 66, 132, 135	<p>Time limit prescribed in section 66(1)(c) is relevant to the orders made by the AAC under section 132(1)(a) or to the orders made by the ITAT under section 135(4) relating to the orders of assessment only. Limitation is not applicable to carrying out the instructions given by the AAC against orders under section 52 or 86.</p> <p>If it is established that the recipient has paid tax on the payments or the authority having jurisdiction over the recipient has declared that no tax is payable on such payments, then there would be no jurisdiction with the officer having jurisdiction over the withholding agent to treat the withholding agent as assessee in default. Payments can neither be subjected to tax at two different stages nor can a person be considered as assessee in default in respect of payments which in the hands of the recipient are adjudged as non-chargeable to tax.</p>

DECISION OF FEDERAL TAX OMBUDSMAN

- (2002) 86 TAX 289 (FTO) 14 & 19 of Sales Tax Act, 1990
- The complainant was registered under section 14 of the Act by National Tax Survey Team. The contention of the complainant was, that since he is a retailer, he is liable to be registered under clause (ii) of sub-section (1) of section 14 of the Act if the value of supplies in any period during the last 12 months ending any tax period exceeds Rs.5 million. Further the period of 12 months was to be counted backwards from the date he was compulsorily registered. Since in this manner the value of supplies does not exceed the required threshold, the registration order is illegal. The honourable FTO held that the Collector in order to register a retailer under section 19 has to work back the value of supplies for period of 12 months from each tax period ending the last 12 months. Since the liability of the complainant was not determined under section 19 in accordance with the procedure laid down in section 14(1)(ii), the concerned officer was directed to review the case in light of FTO's observations and cancel the registration under proviso to section 19 of the Act, if deemed fit
- (2002) 86 TAX 292 (FTO) 7(1), 7 & 8 of Finance (CVT) Act, 1989 and Rule 8 of CVT Rules, 1990
- The complainant purchased agricultural land. However, at the time of mutation did not pay Capital Value Tax (CVT). The Income Tax Department served recovery notice demanding the complainant to pay CVT along with additional tax. It was been held by the FTO that under section 7(1) of the Finance Act, 1989 the department can only demand actual CVT and not the additional tax which powers rests with the registration authority as provided under section 7(8) of the Finance Act
- (2002) 86 TAX 310 (FTO) 45A(4) & 19 of Sales Tax Act, 1990
- The complainant a registered person with the Sales Tax Department runs a cotton factory. The complainant did not collect sales tax on supply of cotton seeds made by it since the levy was disputed by Cotton Ginners. He, however, availed amnesty announced by the CBR vide SRO 75(I)/98 dated June 12, 1998 from the levy of additional tax/ penalty by depositing the principal amount. When he applied for refund of excess sales tax paid through electricity bills, was confronted with outstanding demand of additional tax (on a computer print out without any calculation, details or any specific order) for the reason that a sum of Rs.425,556 though deposited through challan on March 20, 1998 did not get support from the return filed on August 31, 1999. The FTO taking notice of this maladministration has in his classic remarks observed, "The principles of Audi Alteram Partem are so deeply enshrined in the modern legal system that these are to be read in every statute. These require that the pocket of a subject should not be touched without first confronting him with the action envisaging a financial burden". After observing this, the FTO, inter alia, recommended that the refund as claimed may be allowed after verification

(2002) 86 TAX 320 (FTO)	Sales Tax, refund of input tax	The complainant is a registered person with the Sales Tax Department and deals with manufacture and export of processed fabrics etc. It was allowed refund of input tax on its exports. Subsequently the Sales Tax Department alleged that the complainant had claimed refund on the basis of fake/ flying invoices issued by the supplier M. Karam Textiles who did not exist. The transactions were not physical but were mere paper transactions since the raw material was not physically purchased by the complainant from its supplier. However, the case was closed since it was conceded by the department during the hearing that on investigation it was discovered that M. Karam Textile who had issued the sales tax invoices was a genuine party and had paid sales tax on its supplies made to the complainant Ihsan Yousuf Textiles, and the issuance of the show cause notice was therefore inadvertent.
2002 PTD 3043 (FTO)	3 – D & Rule 11 of Central Excise Act	<p>The complainant claimed refund (on the basis of the decision by the Hon'ble Lahore High Court in the case of Seven Up Bottling Company) of excess CED charged and paid when the company worked under the Production Capacity Rules. This decision of the High Court was upheld by the Supreme Court which held that Rule 7A(i) of the Capacity (Aerated Water) Rules, 1990 was ultra vires. The Collectorate was of the view that the claim of refund was time barred in view of Rule 11 of the Central Excise Rules. Further the refund was also not admissible under section 3 – D of Central Excise Act, as the incidence of tax had been passed on to the consumers. The FTO held that the complainant was eligible to claim the refund for the following reasons –</p> <ul style="list-style-type: none"> (i) the Apex Court has already struck down Rule 7A(i) of the Capacity (Aerated Water) Rules, 1990 (ii) Rule 11 of Central Excise Rules is not applicable in the instant case since it deals with refund of CED paid through inadvertence, error or misconstruction whereas in the instant case CED was not leviable under the law, the question of bar of limitation does not arise (iii) since the complainant is not the collecting agent nor the person who has collected any duty, instead has paid excess CED to the Federal Government, section 3-D which deals with collection of CED is also not applicable
(2002) 86 Tax 296	139 of the Income Tax Ordinance, 1979	Every person responsible for making payment under the head of "salary", under his own signatures and designation and deducting and depositing the tax with the Govt. exchequer is liable to file statement U/s. 139 of the Income Tax Ordinance, 1979. In case of willful default Assessing Officer can levy penalty.
(2002) 86 Tax 298		Complainant is a bank employee, filed complaint that some official of income tax department are involved in harassing the employees of bank and are receiving bribes for their assessment. The employees also filed affidavits to this effect. The Honourable Federal Tax Ombudsman recommended to initiate disciplinary action against the involved persons.
(2002) 86 Tax 305	2 of F.T.O 2000	<p>In para 6 it has been observed by the Honourable Federal Tax Ombudsman :-</p> <ul style="list-style-type: none"> (i) Any order passed without notice to the affected party is illegal. (ii) Delay in service of an order or non-service of an order fall within the definition of maladministration
(2002) 86 Tax 309	77(3) of the Income Tax Ord., 1979	In this case it was recommended to issue the refund after adjustment of outstanding tax of the member of the Association of Persons to the extent of the share of the member as provided in Section 77(3) of the Income Tax Ordinance, 1979.
(2002) 86 Tax 313	93(2) of the Tax Ord. 1979	The Honourable Federal Tax Ombudsman recommended that tax officials should hold regular meetings to discuss arrears of demand, in order to delete tax demands where matters has been modified in appeal or have been set aside. This practice will help to collect the actual tax.

- (2002) 86 Tax 317 156(2) of the Income Tax Ord. 1979 The income of the complainant is exempted from tax under clause 118 D of the Second Schedule. The Assessing Officer allowed exemption but did not carry forward the business loss and unabsorbed depreciation. Complainant filed application U/s. 156 which was rejected when it was going to be barred by time, without providing opportunity of hearing under sub-Section 2 of Section 156. The Honourable Federal Tax Ombudsman directed the Commissioner of Income Tax to cancel the order U/s. 156 with directions to pass the order after providing reasonable opportunity of being heard to the complainant.
- (2002) 286 Tax 322 66-A of Income Tax Ord. 1979 Complainant challenged the issuance of notice U/s. 66-A. On the date of hearing respondent was informed that the notice has already been withdrawn on the instructions of the Commissioner of Income Tax. The Honourable Federal Tax Ombudsman has observed that in most of cases Department initiate proceedings U/s. 66-A and 65 without any basis merely to make hindrance in the issuance of refunds.
- (2002) 86 Tax 326 13(1)(e) of Income Tax Ord. 1979 Rule 8(3) W. T. Act Conformation on order Sheet does not fulfil the statutory requirement of notices U/s. 13 (1) and 13(2) of the Income Tax Ordinance, 1979, as section 13(1) and 13(2) clearly provide provision of calling of the assessee's explanation. The Honorable FTO recommended that the orders be set aside U/s. 138 by the Commissioner of Income Tax and complete reassessment proceedings after giving proper opportunity of being heard.
- Complainant let out a portion of his house In the Assessment Year 1999-2000 and 2000-2001. The Assessing Officer estimated the value of property after estimating the ALV and made addition in the assessment years 1996-97 to 2000-2001. Whereas in income tax declared rents were accepted. The Honorable FTO has held that the Assessing Officer cannot make addition in the assessment years 1996-97 to 1998-99 where property was not let out. It is also held that the declared ALV has to be accepted as the same has been accepted in the income tax proceeding. Also recommended to allow consequential relief in respect of additional tax.
- (2002) 86 Tax 333 Departmental personal by fraud and forgery withdrew refund of the complainant. The Honorable FTO has recommended for reassessment and directed to issue the refund within 15 days and observed that the fraudulent refund made will not affect the right of the complainant.
- Regarding the fraudulent encashment of refund the Honorable FTO has directed to take disciplinary action against the official involved.
- (2002) 86 Tax 341 Returns of income for the assessment years 1996-97 and 1997-98 were signed by the brother of assessee. As well as during the proceedings Circle Inspector reported that the assessee has 28 power looms. Whereas complainant claimed that in the assessment year under consideration there were four power looms under his ownership. The Circle Inspector has not mentioned in his report how 28 looms came to his ownership. In these circumstances the Honorable FTO has declared the orders is invalid and directed the Commissioner of Income Tax to cancel the orders U/s. 138 and to ascertain number of looms after making a fresh inquiry.
- 2002 PTD 3106 (LHC) 138 of ITO, 1979 & 239 of ITO, 2001 The assessee filed a revision petition under section 138 of the Income Tax Ordinance, 1979 before the Commissioner of Income tax, which was rejected primarily for the reason that it pertained to the repealed Ordinance, which has been replaced with the Income Tax Ordinance, 2001. It was contended that in view of section 239 (savings) of the Income Tax Ordinance, 2001, the revision petition was entertainable. The LHC, while disposing the writ filed by the assessee, has directed the Commissioner to entertain the revision petition and pass the appropriate orders as the law requires, with the following observations: -
- "Refusal to entertain a petition by an agency is something exceptional. When a citizen places a petition, the agency is legally bound to entertain it and, then to proceed with it legally while keeping in mind its worth. A bald refusal or even entertaining a petition filed within the periphery of a law is just not permissible and the act of refusal amounts to an arbitrary action which constitutes "maladministration", as defined by P. O. No.1 of 1983."

OTHER LAWS

2002 PTD (Trib.) 3077 25(1)(5), 16,
32(3) & 156
of Customs
Act, 1969

The appellant imported certain domestic home appliances, which were cleared by the Customs on the basis of declaration made. Subsequently, it was observed that the said goods had been imported previously at higher values. It was believed that the importer deliberately with mala fide intention, evaded duty and taxes on the basis of manipulated and fake documents. This, according to Customs, attracted the provisions of section 16 and 32(3) of the Act.

It has been observed that section 25(5) is attracted only when the value of goods cannot be determined under section 25(1) as where a case does not fall in any of the four exceptions i.e. (a) to (d) to the proviso to section 25(1), it cannot be said that the value cannot be determined under that sub-section and for this, burden of proof is on the department.

The fact that the seller may have given a greater concession to buyer, who was becoming a regular customer, had been completely ignored. It was also noticed that an invoice price cannot be routinely discarded except on the strength of a clear evidence that the invoice is not genuine and it does not show the real price that has been transacted between the importer and the foreign supplier. A transactional value cannot be rejected because there are some contemporaneous imports at higher price. It has to be shown that invoice price is not genuine and does not show the real price paid for the imports. Since the appellant had produced copies of L/Cs opened, which clearly indicated the transactional value and actual price paid, the action taken against the appellant was held against the law. It was also noted that no document has been shown that the disputed transaction is false or is an outcome of a fraudulent activity and the Customs have only relied upon a previous transactional value, which does not prove the case of the Customs on solid grounds. After observing the concepts of GATT and BDV valuations, in the following terms, the matter was set aside for valuation in terms of GATT Code: -

"It may be pointed out that the concept of valuation under GATT Code is entirely different from that of BDV. In the later concept there used to be a notional value to maintain equilibrium in the market economy. In the GATT concept it is the transaction which has been protected unless evidence can substantiate a fraudulent transaction. This is why that in the GATT system, it is the post import investigation which is more important than passing a value judgment on assumptions at the time of import."

2002 PTD (Trib.) 3083 2(s), 9, 10 &
156(8)(9) of
Customs
Act, 1969

The appellant's vehicle was seized by Customs under section 156(1)(8) on the allegation that the same was smuggled since its chassis number was punctured. It was contended that assumption of the seizing agency in treating the vehicle as "smuggled" within the framework of section 2(s) was wrong since their activities are restricted to prevention of an act of smuggling under the Customs law. The Tribunal held that clause (s) refers only to goods specified therein and other goods notified by the Federal Government and does not cater such goods whose import or export is prohibited elsewhere, which situation is governed by section 156(9). The matter was accordingly set aside to decide whether the issue falls under the mischief of the Customs Act, 1969 and what evidence is available to prove the offence and whether in the circumstances, seizure was valid or not

- 2002 PTD (Trib.) 3053 32, 79, 80, 82, 156, 180 & 209 of Customs Act, 1969 M/s. Dawlance (Pvt.) Ltd. and their clearing agents M/s. Omalsons Corporation have been held guilty of making an untrue statement and have been charged with penalty in terms of section 32 of the Customs Act, 1969 by the Deputy Collector of Customs. They imported a consignment of compressors meant for domestic manufacturing of refrigerators and deep-freezers, which was released on concessionary rate of duty under SRO 504(I)/94 dated June 9, 1994. The customs believed that in terms of CBR's letter dated June 7, 1995 concession allowed to the importer was not available to them and there existed a relationship of agent and principal between the agent and the importer which had created a liability on the agent within the mischief of section 32. The Tribunal while scrutinizing the provisions of section 32 *ibid*, held that in order to attract the provisions of section 156(1)(14), presence of the following factors is necessary: -
- To make any declaration, notice, certificate or other document;
 - To sign any declaration, etc.;
 - To cause to be made or signed any declaration, etc.;
 - To deliver or cause to be delivered any declaration, etc., to an officer of Customs;
 - To make any statement in answer to any question put to him by an Officer of Customs, which he is required by or under this Act to answer
- It has been held that the importer or his agent did not make an incorrect declaration rather the goods have been got cleared at concessionary rates which did not attract the provisions of section 32 as the goods have been cleared after proper assessment by the Customs authorities for which a mechanism is duly provided under the Act viz. section 79 and 80 in which the agent merely acted on behalf of the importer. It is also held that in the show cause issued by the Adjudicating Officer, no mention of any action against the agent was specified which in terms of section 180 of the Act was mandatory. Accordingly it has been held that the agent could not be held responsible for the action which entails levy of penalty under the circumstances of the case
- 2002 PTD 3087 (FTO) 205 (s), 9, 10 & 156(8)(9) of Customs Act, 1969 The complainant imported Spindles and Bolsters from China and filed bill of entry for home consumption and inadvertently claimed the assessment of goods under PCT heading 8448.3300. Later it was revealed that duty on Bolsters was 10% instead of 20%. On the basis of decision of the Supreme Court and High Court of Sindh in the case of Gulshan Spinning Mills (1992 CLC 1579) the complainant applied for amendment in the bill of entry for the goods to be classified under H.S. Code 8448.3900. Although the Deputy Collector, Customs (Sheds) confirmed the view of the complainant, the Assessing authorities refused to accede to the request and did not allow the refund of excess duty paid. Customs contended that judgment relied upon was not applicable in the case as it related to classification of Bolsters only whereas the impugned goods were complete sets consisting Spindles, Bolsters and knee brakes which entail duty of 20% under heading 8448.3300. Since the complainant sent two applications to the Customs but did not get any reply, he did not receive any document against which he could file an appeal or approach legal forums, the matter was recommended to Member Customs, CBR to decide the classification

WEALTH TAX

- 2002 PTD (Trib) 3051 Wealth Tax Act, 1963 Any advance received from the tenant in the form of securities which is refundable to the tenant at the time of vacation of the premises is an allowable liability. The said securities are totally different and distinguishable from the unadjusted advance rent and both cannot be treated as same.
- 2002 PTD (Trib) 3142 Wealth Tax Rule 8(3) The assessing officer cannot enhance the declared value of the rent without the approval of the IAC.
- 86 TAX 233 (Trib) WT History of the case cannot be deviated in the absence of any solid reasons. No property could fetch double value in the immediately subsequent year. History could be taken as best guide while valuing the same property in a subsequent year..

86 TAX 240 (Trib)

WT 14(2),
17(1)(a)

It is golden principle that no discrimination can be made under the law because all the assesseees are to be treated equal. This has been provided under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and has been so implemented by the superior courts as held in the following cases: -

- 1987 PLD Supreme Court of Pakistan 447
- 1958 PLD Supreme Court of Pakistan 201
- 1999 PTD Karachi High Court 4037

Provisions of section 14(2) of the Wealth Tax Act, 1963 are materially different from the provisions of section 56 of the Income Tax Ordinance, 1979. There is no concept of having concurrent / simultaneous jurisdiction under section 14(2) and 17 of the Act. Assessment proceedings cannot be initiated beyond the assessment year by issuing notice under section 14(2) of the Wealth Tax Act.

Assuming jurisdiction under other than a legal provision is not a procedural mistake and being fatal to the whole proceedings cannot be ignored by the appellate authorities.

When there is no jurisdiction or no valid jurisdiction with an authority the orders passed in these circumstances are void and nullity in the eyes of law. Even where both the sides had agreed to waive a portion of a statutory provision, cannot confer jurisdiction which according to statute is not there.

Once an assessee files a return in a Circle, he cannot challenge that this Circle does not have jurisdiction over his case. So far as the exercise of legal jurisdiction for assessment proceedings is concerned, this is the foundation of the legal orders and therefore, can be challenged at any stage because it goes to the very root of the assessment order.

A return filed in compliance of notice under section 14(2) of the Act cannot be treated as return under section 15 of the Act.

Steps to be taken by DCWT for valuation of building under Rule 8(3) have been explained.

86 TAX 300 (Trib)

Clause (8A),
Part I,
Second
Schedule to
WT Act,
1963

Repayment of loan, used in purchase of shares, either through encashment of foreign currency cannot be treated that assets were created as a result of encashment of foreign currency as envisaged by clause (8A) of Part I of Second Schedule to the Act for the purpose of allowing exemption.

FUTURE CPE ACTIVITIES

DATE	SEMINAR/ WORKSHOP	CHIEF GUEST/ SPEAKERS	VENUE
March 31, 2003	Powers and Misuse of section 122 of the Income Tax Ordinance, 2001	Mr. Ather Saeed, Advocate	Conference Hall, Ground Floor, New Income Tax Building, Karachi.
April 13, 2003	Pre-Budget Seminar	Mr. Abdul Qadir Memon	Conference Hall, Ground Floor, New Income Tax Building, Karachi.

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.