



# 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>			
SRO No.728/(I)/2002	23.10.2002	Clause (99) of Part I of Second Schedule substituted regarding exemption of Income of a Mutual Fund/Investment Company/Unit Trust Scheme of an Assets Management Company.	168
SRO No. 940(I)/2002	19.12.2002	Exemption to Profits & Gains available to a tax payer from an electric power generation project withdrawn in respect of Oil Fired Power Plant by insertion of proviso to clause 122 of Part I of the Second Schedule to the Income Tax Ordinance, 2001. The partial withdrawal of exemption is effective from October 22, 2002.	169
SRO No. 961(I)/2002	23.12.2002	A new clause (43C) has been inserted in Part IV of Second Schedule to the Income Tax Ordinance, 2001, whereby M/s. Hascombe Storage (Pvt.) Limited, Karachi, have been exempted from withholding tax under section 153 on supply of petroleum products.	170
<b>SALES TAX</b>			
General Order No. 1 of 2002	31.8.2002	Clarification regarding Repealed Sales Tax Refund Rules, 2000 issued vide SRO 417(I)/2000 dated. 20.6.2000 and Sales Tax General Order No.3 dated. 31.8.2000 also withdrawn with immediate effect.	171
General Order No. 2 of 2002	23.9.2002	Procedure for filing of Application for Condonation of Delay in submission of Installation, Consumption or Utilization certificates to Board/Collector of Sales Tax.	172
General Order No.3 of 2002	24.09.2002	Amendment in Sales Tax General Order No.4 of 2000 dated. 1.9.2000, with regard to Sanction of Refund claims of Import Related Sales Tax by the Collectorates of Customs.	173

General Order NO. 4 of 2002	01.11.2002	Procedure regarding Zero-Rated supply of Locally Manufactured Goods to Duty Free Shops.	174
General Order No. 5 of 2002	08.11.2002	GST – related functions of the Member (Audit) specified.	175
General Order No.6 of 2002	26.12.2002	Procedure for payment of Sales Tax on services provided by the Customs Agents, under Provincial Sales Tax Ordinance explained.	176
Instruction No.71/2002	18.12.2002	A Commercial Exporter interested to avail the Facility of Zero-rating under S.4 of Sales Tax Act read with S.10, can apply for Voluntary Registration u/s.18 only, if he wants to take Refund on his Exported Goods in terms of Sales Tax Refund Rules, 2002, otherwise he is not required to obtain registration.	177
Instruction No.1/2003	07.01.2003	Beauty Parlours, Beauty Clinics, Slimming Clinics, Laundries and Dry Cleaners, providing services, shall pay prescribed Sales Tax under Provincial Sales Tax Ordinances on the basis of their turnover:	178
CBR Letter No.1(3) STR/2000	24.9.2002	Clarification regarding claim of Input Tax against Electricity Bills by a unit engaged in retail sales activities.	179
CBR Circular Letter No.2(1)/STP/2000 (Pt.)	30.11.2002	Authorization to Collectors to allow Refund to Exporters for pending claims under old Refund Rules, on fulfillment of specified conditions.	180
SRO 869 (I)/2002	30.11.2002	Amendments made in SRO 555(I)/2002 dated 23.08.2002, in respect of registered Manufacturers and Importers of Medicines and Medicaments.	181
SRO 966(I)/2002	30.12.2002	Special Procedure for Manufacturers – cum -Suppliers of Spun Yarn Rules, 2002 promulgated.	182
SRO 02(I)/2003	01.01.2003	Certain amendments made in the Sales Tax Refund Rules, 2002.	183

### CORPORATE LAW

Circular No.11 of 2002	06.06.2002	International Accounting Standard (IAS) 30 – “Disclosure in the Financial Statements of Banks and similar Financial Institutions” directed to be followed by Investment Banks, Modarabas (other than trading Modarabas) and Leasing Companies, with regard to preparation of financial statements, for accounting periods beginning on or after July 01, 2002.	184
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Circular No.12 of 2002	17.10.2002	Private Companies and Non-Listed Public Companies, who have belatedly filed Statutory Returns with the Registrar for the periods upto 31.12.2001, with three times additional fee for delay u/s. 469, may be absolved of any liability arising from such default.	185
Circular No.13 of 2002	06.11.2002	General Extension of 60 days allowed for holding of Annual General Meeting (AGM) by Listed Companies, Unlisted Public Companies and Private Companies, whose financial year expired before the promulgation of Companies (Amendment) Ordinance, 2002 on 26.10.2002, pursuant to which such AGM is to be held within 4 months of close of the financial year.	186
Circular No.14 of 2002	11.11.2002	Significant Amendments in the Companies Ordinance, 1984 made by the Companies (Amendments) Ordinance, 2002 dated 26.10.02 explained.	187
Circular No.15 of 2002	02.12.2002	Pursuant to amendments in the Banking Companies Ordinance and Companies Ordinance, 1984 regulatory supervision of all Non-Banking Financial Institutions (NBFIs) excluding Development Financial Institutions (DFIS), brought under the regulatory purview of the Securities & Exchange Commission of Pakistan (SECP) effective from 02.12.2002, which were hitherto being regulated by the State Bank.	188
Circular No.16 of 2002	11.12.2002	Guidelines/Clarifications for submission of Quarterly Accounts by the Listed Companies under S.245 of the Companies Ordinance, 1984.	189
Circular No. 17 of 2002		CIRCULAR NOT AVAILABLE	190
Circular No. 18 of 2002	19.12.2002	Further clarifications for submission of Quarterly Accounts by the Listed Companies.	191
Gazette dt. 29.10.2002	29.10.2002	Listed Companies (Substantial Acquisition of Voting Shares and Take-Over) Ordinance, 2002 promulgated.	192

**SYNOPSIS OF IMPORTANT CASE LAW****INCOME TAX**

(2002) 86 TAX 224 (H.C)

- 13(1)(a) Addition under Section 13(1)(a) was made in the case of bank, which was held invalid as the assessing officer had failed to discharge his onus u/s. 13(1)(a). Neither any specific sum was pointed out nor any finding was given as to when it was credited in the books. Tribunal further held that addition was made on guesswork, presumptions and surmises and without any basis.

Department filed Appeal u/s 136(1) before Hon'ble High Court. The Hon'ble High Court after examining the case held that the finding of Tribunal was primarily based on appreciation of facts and so far the question of law is concerned, no substantial point requiring interpretation has been raised. Therefore it was held that no question of law requiring interpretation or furnishing of opinion of court arises out of the order of the Income Tax Appellate Tribunal.

(2002) 86 Tax 239 H.C. Lah.

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An advocate could not be debarred from appearing before the Income-tax authorities as an authorised representative of an assessee. Section 157(2)(a)(iv) of the Income-tax Ordinance, 1979 includes a legal practitioner entitled to practice in any Civil Court in Pakistan to be an authorised representative. On the other hand the Income-tax practitioner defined in Section 157(2) (c) of the Income-tax Ordinance, 1979 is a person who is altogether different from the person who is a legal practitioner. A person even if he is debarred under Section 157(3)(a) will not be disqualified to represent an assessee if he enrolled as an advocate and is on the role of a Provincial Bar Council.

(2002)86 Tax 241 H.C. Lah.

In this case, matter was remanded back to the DCIT by CIT (A), Assessee filed appeal before the Income-tax Appellate Tribunal (ITAT) which was pending. The DCIT proceeded with the set aside assessment inspite of the fact that the assessee informed the DCIT about the pending appeal before the ITAT.

The Hon'able High Court relying on the judgment of 1985 PTD 375 held that as the matter of first assessment is still pending before Appellate Tribunal, the respondent (Assessing officer) having been fully intimated ought to have waited for the decision of the appeal.

(2002) 86 Tax 254 H.C. Kar

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The Hon'able Supreme Court on the facts and circumstances of the case have accepted the contention that for the purpose of Section 53, the rate of tax would be worked out after considering the effect of appellate order if it has been passed prior to date of payment of installment.



(2002) 86 Tax 165 (Trib)	Clause 86 of Part 1 of the Second Schedule	<p>In this case assessee an educational Institute was refused exemption under clause 86 of part 1 of the Second Schedule to the Income-tax Ordinance, 1979 on the ground that some of the teachers were related to the members of the Board of the Directors. The Hon'ble Tribunal held that an Institution is separate from its administration. The method of running the institution has nothing to do with the purpose of its establishment. If the Board of Trustees have employed some staff related to them but staff is paid salaries suitable to their qualification and no impression is shown that same are disproportionate to their abilities, it cannot be made a tool to disallow the exemption. Guidelines provided for grant of exemption under clause 86.</p>
(2002) 86 Tax 207 Trib.	66A	<p>In this case stay of proceedings was filed by the assessee requesting the learned Tribunal to stay the proceedings of assessment by the Assessing Officer in compliance with the orders passed under Section 66-A. The application was allowed and stay of proceeding was granted. The department moved an application for vacation of stay of proceedings. The Hon'able Tribunal rejected the Departmental application by placing reliance on the judgments of the Superior Courts where it was held that assessment once made does not come to end until proceedings with regard to assessments have finally been concluded and since the matter of first assessment is still pending, the department should wait until the issue is decided by the Tribunal.</p>
(2002) 86 Tax 219 Trib.	65, 13	<p>In this case, it has been held by the learned Tribunal that the provisions of Section 65 cannot be invoked merely on the basis that value of the property in a parallel case being different does not come within the definition of the term "Definite information". The learned Tribunal has again reiterated that where acquisition of property is by registered Sale Deed, ordinarily, consideration on the deed should be accepted as the value of property. The exception to this rule is that revenue should prove that the consideration shown in the Deed was too low and the assessee acquired property by spending more money. It has also been observed that merely claiming that the market value of asset was higher than the price the assessee has actually paid for acquisition of property is not enough. There should be evidence in this regard, from which the assessee has made excess payment.</p>
(2002) 86 Tax 210 Trib.	86	<p>In this case the assessee was charged additional tax under Section 86 of the Income Tax Ordinance, 1979. The Assessing Officer subsequently, once again proceeded to enhance the charge of Section 86, by initiating fresh action under section 86. The learned Tribunal vacated the impugned order on the ground that the Assessing Officer is not authorized under the law to levy tax twice. Further, it has been observed that the learned Assessing Officer also failed on that count for the reason that additional tax could not be enhanced without issuing the mandatory notice under Section 156(2).</p>



(2002) 86 Tax 203 Trib.	136,134	In this case, the issue arose before the learned Tribunal in Reference Application under Section 136(1). The Departmental Appeal was dismissed on the ground that appeal was not maintainable, as it was not filed through a competent authority. The Department's contention before the learned Tribunal was that appeals of the department were dismissed on technical grounds. The learned Tribunal has held that such mistakes were not technical objection/mistake/ omission which could be cured under Section 155 and it has been held that law require some thing to be done in a particular manner, the same must be done in that manner or that may not be done at all.
(2002) 86 Tax 196 Trib.	50(4),80C	In this case while deciding the Reference Application filed by the Department on the point of chargeability of tax under Section 80C on transactions of buy and lease back agreements. The learned Tribunal has held that subsequent amendment made under Section 50(4)(b) where non-deduction of withholding tax on such transaction has been incorporated, the learned Tribunal has held that such amendment was beneficial and remedial in nature, hence retrospective which is applicable on all pending proceedings including appeal in reference. Reference has been made in the case reported as (1992) 66 Tax 125 SCP. Thus the learned Tribunal dismissed the Departmental appeals.
2002 PTD 3010 FTO	59 and 104	In this case, the assessee's return was excluded from Self Assessment Scheme on the ground that assessee has not paid the tax u/s 54 and adjustment of Section 104 was not permissible. The interpretation put by department was held to be incorrect and it was directed to accept the Return under Self Assessment Scheme.  <b>(Note:- This is a very important judgment, the learned Members are requested to read the entire judgment).</b>
2002 PTD 2954	12(1), 50	Salary of employees of state owned enterprise working in Northern Tribal areas, is taxable u/s 12(1) despite of the fact that provision of Income Tax Ordinance is not applicable to the Northern Areas.
2002 PTD (TRIB) 2942	5, 56	It has been held that it is cardinal principle of statute that where a question of jurisdiction of a case is involved and ultimately it is established that the order has been passed without lawful jurisdiction, such order should be cancelled rather than setting aside the same.
2002 PTD (TRIB) 3000	27	In this case, the department had taxed the exempt profits from capital gain from sale of property by treating the same as adventure in nature of trade. Further to this the Department had also estimated the value of property. The learned Tribunal confirmed the departmental action of treating the transaction an adventure in the nature of trade since the assessee had originally bought the plot for the purpose of construction of flats, which however, did not materialize. The Tribunal further upheld the directions of the learned Commissioner of Income-tax (Appeals) to accept the declared sale



price as the same was also accepted in the case of purchaser of the same property.

2002 PTD (TRIB) 2890

It has been held by the Hon'ble Court that while exercising Advisory jurisdiction under Section 17 of the Sales Tax Act, 1951, the Court is supposed to give its opinion on a particular point of law referred by the Tribunal or admitted by the Court on an application submitted by the party to the proceedings. The opinion of the Court is to be confined to the point referred to the Court and not to extend to another point.

It has been further held that while interpreting/applying provision of fiscal statute levying any tax or creating any financial burden or liability on a subject/citizen, the law is to be interpreted liberally in favour of the subject/taxpayer. A tax is to be levied by a clear and unambiguous legislation and any doubt or ambiguity in the manner of the levy of tax is to be resolved in favour of Citizen/Subject/Taxpayer.

However, another equally important principle always to be kept in view is that the grant of exemption from levy of any tax of the claim of any exemption by any taxpayer envisage the levy of the tax and the effect to the grant of exemption is that a particular transaction in the case of sales tax shall be allowed to go untaxed which was otherwise subject to the levy of tax. In other words, the effect of exemption is, that a tax is allowed to be evaded by the legislature itself.

In the matter of interpreting and applying the provisions pertaining to the exemption, the provision of a fiscal statute is not to be interpreted liberally as in the case of levy of tax but have to be interpreted and applied strictly and exemption is to be allowed in such case, only where an assessee is able to establish that, it is covered by exemption provisions on all fours.

### **SALES TAX**

(2002) 86 Tax 243 H.C. Kar.

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Distinction between void and illegal or avoidable order explained.

(2002) 86 Tax 264 H.C. Kar

2(12), 27(1)

The Hon'able High Court while examining the provisions of Section 2(12) of the Sales Tax Act, 1951 has interpreted that the term "subject to tax" been rightly read as subject to payment of tax and thus since the assessee had not paid the tax on the end products the claim of refund was refused.

2002 PTD 2959

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In this case, the assessee filed Writ Petition challenging the notification issued by the Federal Government under Section 8(1)(a)(b) of the Sales Tax Act, 1990, where in claim of input tax was not allowed inter-alia on the POL products other than furnace oil, lubricants and greases. It was challenged on the ground that since

the Petitioners are utilizing the electricity produced by in-house generators using diesel, the notification is discriminatory and such notification is against the statutory provision. The Hon'ble High Court after examining the provisions of Section 2(20), 7 and 8 and judgment of Hon'ble Supreme Court held that express provisions of substantive law cannot be nullified by the Federal Government by means of notification which by all means is a sub-legislative measure. It was therefore held that once a registered person establishes that the goods in question on which input tax has been paid were used or to be used for the purpose of manufacture or production of taxable goods or for taxable supplies made or to be made by him, then subject to the terms of Section 7 he becomes entitled to the deduction of the said input tax paid by him for the said purpose from the output tax that is due from him in respect of the particular tax period.

### OTHER LAWS

2002 PTD 2957

Section 25 of  
Customs Act

In this case it has been held that for the purpose of valuation under Section 25 of the Customs Act, the Department should bring admissible and convincing material, otherwise the assessee shall not be liable to pay further tax and duties.

### NATIONAL TAX CONFERENCE, 2003

For the first time in the history of Pakistan a National Tax Conference is being organized by the Income Tax Bar Association Karachi on 21<sup>st</sup> – 22<sup>nd</sup> February, 2003 at Hotel Pearl Continental, Karachi. The theme of the Conference is **"Tax Culture for Revival of Economy"**, Mr. Shaukat Aziz, Advisor to Prime Minister on Finance and Economic Affairs has kindly consented to be the Chief Guest of the Conference. Register yourself at the earliest.

### FUTURE CPE ACTIVITIES

DATE	SEMINAR/ WORKSHOP	CHIEF GUEST/ SPEAKERS	VENUE
March 3, 2003	Workshop on Sales Tax Act, 1990	To be Announced later	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.