



ITBAK's

News & Views

Members' Assistance Committee

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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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Message of the Convenor – Members Assistance Sub-committee

Dear Members,

On behalf of the Members' Assistance Sub-committee, we are pleased to present the combined issue of "ITBAK'S News & Views" for September/October, 2002.

We would like to inform you that in this issue we are covering the Circulars and Clarifications issued upto November, 2002 and Case Laws published in the Taxation and PTD for the months of August and September, 2002. We hope that you would continue to benefit from our endeavor to provide you update information relating to the profession.

We would also like to inform you that in our effort to improve the quality of our obligation and to ensure un-interrupted publications in future, we have inducted four distinguish members of our bar Mr. Asif Ali Khan, Mr. Kazi Anwar Kamal, Mr. Rehan Siddiqui and Syed Hassaan Naeem in our Committee. We welcome them and hope that they would contribute to the best of their abilities towards this noble cause.

Finally, I would like to thank the members of the Members' Assistance Committee for their continued support and efforts in making this publication possible.

With best regards

For and on behalf of Members' Assistance Sub-Committee
Haider Ali Patel, ACA
Convenor

SUMMARY OF CIRCULARS/NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
INCOME TAX			
Circular No.15	30-11-2002	Clarification regarding cases wrongly selected through computer ballot for Total Audit held for the Assessment Year 2002-2003.	142
SRO No.586(I)/2002	28-08-2002	Amendments in the First Schedule to the Income Tax Ordinance, 2001 to rectify certain apparent mistakes.	143
SRO No.596(I)/2002	15-09-2002	A new clause (121) inserted in Part I of the Second Schedule to grant exemption to profits and gains derived by an assessee from an industrial undertaking setup in Export Processing Zone for the Assessment Years 1998-99 to 2000-2001.	144
SRO No.609(I)/2002	10-09-2002	Substitution of Rules in the Income Tax Rules, 2002 governing the valuation of perquisites, allowances and benefits in determining the income under the head Salary.	145
SRO No.633(I)/2002	14-09-2002	Amendments/addition made in sections 114, 121 and 122 of the Income Tax Ordinance, 2001.	146
SRO No.724(I)/2002	-10-2002	New clause 13(A) inserted in Part IV of the Second Schedule to the Income Tax Ordinance, 2001 to grant exemption from applicability of section 113 to Kot Addu Power Company Limited.	147
SRO No.830(I)/2002	22-11-2002	New clause 43(B) inserted in Part IV of the Second Schedule to the Income Tax Ordinance, 2001 to grant exemption from applicability of Section 153 in respect of payment for goods and service to Al-Rahim Trading Company (Pvt.) Limited for the supply of petroleum products.	148

SALES TAX

Instruction No.60/2002	11-09-2002	Clarification regarding refund of sales-tax paid on domestically manufactured stocks of medicine held on August 22, 2002.	149
Instruction No.61/2002	16-09-2002	Following clarifications in respect of new refund rules notified vide SRO No.575(I)/202 dated 31-08-2002.	150
		(i) SRO is applicable on refund claims filed on or after 31-08-2002. Registered persons holding "Gold" and "Silver", status do not require to re-apply for such category under the new refund rule;	
		(ii) refund claims filed before 31-08-2002 shall be processed in accordance with the Sales Tax Refund Rules, 2000 issued vide S.R.O. 417(I)/2000.	
Instruction No.62/2002	17-09-2002	Clarification regarding payment made against supply partly in cash and partly in kind.	151
Instruction No.63/2002	12-10-2002	Clarified that hotels-cum-restaurants combine the services of manufacture and retailer. Therefore, in view of the exclusion of manufacturers from the definition of retailer given under section 2(28) of the Sales Tax Act, 1990, such hotel shall be treated as manufacturers and threshold and annual turnover limits prescribed for the manufacturer in section 3A and Serial No.42 of the Sixth Schedule to the Sales Tax Act, 1990 shall apply.	152
Instruction No.64/2002	11-10-2002	The following clarifications have been issued for IPP's –	153
		(i) Value of supply of electric power will be "Energy Purchases Price" only and any amount received in excess thereof shall not be treated as component of value of supply.	
		(ii) In case dispute with WAPDA/KESC, if they do not pay any amount then they shall issue a certificate which will be treated as credit note for the IPP for the purpose of section 9 of the Sales Tax Act, 1990.	
		(iii) Similarly if IPP receives any amounts from WAPDA or KESC pertaining to any other tax period then they shall pay tax on such amount in the return for the tax period in which such amount is received.	
		(iv) For the purpose of payment of sales tax all the supplies made during a tax period will have to be accounted for by the IPP in the tax return regardless of whether or not value of supplies has been received from the buyer.	
Instruction No.65/2002	25-10-2002	Further tax under section 3(1A) of the Sales Tax Act, 1990 is chargeable on persons who are not required to be registered under the Sales Tax Act, 1990. Earlier rulings issued by the Board granting immunity from charge of further tax to such person withdrawn.	154
Instruction No.66/2002	04-11-2002	Computer printers ribbon not entitled to sales-tax exemption under Serial No.45 of the Sixth Schedule to the Sales Tax Act, 1990. Earlier contrary rulings/clarifications in this regard withdrawn.	155
Instruction No.67/2002	11-11-2002	Adjustment of input tax paid on advertisement services can be claimed provided it is established that sales tax invoice has been issued by a Sales-tax Registered Person (Service Provider) directly in the name of Sales Tax Registered Person who procure services only for exclusive use in making supplies of taxable goods or rendering services.	156
Instruction No.68/2002	13-11-2002	For the purpose of section 73 actual transfer of payment from buyer's bank account to the seller's bank account should take place within 120 days of the issuance of invoice. Mere issuance of check/draft by the buyer in the name of the seller without actual transfer of payment to the seller would not fulfill the requirement of section 73 of the Sales Tax Act, 1990. Earlier clarification recognizing issuance of a banking instrument issued within 120 days but encashed later as an acceptable mode of transfer for the purpose of section 73, withdrawn.	157
Instruction No.69/2002	19-11-2002	Issuance of concurrent serial numbered invoices for separate business activities are contrary to the provision of section 23 of the Sales Tax Act, 1990. All registered person directed to make supplies against single progressively serial number invoices for a financial year, indicating detailed description of goods on such invoice.	158
Instruction No.70/2002	21-11-2002	The condition of payment through banking channel within 120 days required under section 73 of the Sales Tax Act, 1990 applies to supplies made against sales tax invoices. Since imported goods are supplied by persons residing outside Pakistan against letter of credit, the above condition would not be applicable in case of imported goods.	159
Instruction No.72/2002	31-08-2002	For the purpose of determining monthly export shipments of an exporter, the date of shipment for air-shipments is the E.G.M. date and for sea-shipment the date would be the date mentioned on the mate receipt.	160
SRO No.575(i)/2002	31-08-2002	The Sales Tax Refund Rules, 2002 issued.	161

SRO No.605(I)/2002	10-09-2002	Waiver of sales-tax granted to M/s. Alson Industries who did not charged and recovered any sales-tax prior to 31 st August, 1991.	162
SRO No.606(I)/2002	10-09-2002	Withdrawal of condition No.2 of S.R.O. No.390(I)/2001 dated 18 th June, 2001 of approval of cellular telephone sets by Pakistan Telecommunication Authorities (PTA) to avail exemption from levy of customs duty and sales tax on import of cellular telephone sets.	163
SRO No.699(I)/2002	12-10-2002	Amendments made in the Ship-breaking Industry (Special Procedure) Rules, 1997.	164
SRO.NO.737(i)/2002	26-10-2002	Alternate Dispute Resolution Rules, 2002 issued	165
SRO.NO.788(i)/2002	11-11-2002	Amendment made in the zero rating of supplies against international tender for Afghan Refugees Rules, 2001 to incorporate the change of name of International Red Cross (IRC) to the Committee for International Red Cross (CIRC)..	166
SRO.NO.810(i)/2002	19-11-2002	Amendments made in SRO No.952(I)/1998 dated 5 th September, 1998 to incorporate change in the address of a designated branch of National Bank of Pakistan for receiving return-cum-challans of Sales-tax.	167

SYNOPSIS OF IMPORTANT CASE LAW

CITATION	SECTION	ISSUES INVOLVED
INCOME TAX		
2002 86 TAX 188 (H.C.)	50	The Hon'ble High Court held that refusal to grant exemption certificate under Section 50 (4) (b) was wrong action once the revenue had conceded that the assessee had no other Income other than imports and provisions of Clause-9 of Part IV of Second Schedule were not applicable.
2002 86 TAX 91 (Trib)	66-A, 23	Action under Section 66-A was taken on the ground that the Sales-tax claimed by assessee had been illegally allowed as of expense of profit and loss account, whereas, that was item of trading account and was to be taken from gross sales after re-casting of accounts. The Hon'ble Tribunal after holding the action correct had held that method employed by the assess for recording Sales-tax amount in books of account was absolutely improper. The assessee should have shown sales-tax amount in each side of trading account or net sales should have been recorded on credit side of the trading account. The Accounting principles thoroughly explained. (NOTE : <i>Readers are requested to examine the issues very minutely as it will have effect on numerous cases</i>).
2002 PTD (Trib) 2355	88	Additional tax, held to be discretionary.
2002 PTD (Trib) 2364	66	In this case very important question of law has been decided .In this case assessment was framed under Section 62 which was re-opened under Section 65. The Assessee preferred appeal which was dismissed. The assessee being aggrieved preferred appeal before the learned Income Tax Appellate Tribunal and case was set-aside against which the department preferred appeals which were dismissed by the Hon'ble High Court. The Assessing Officer issued fresh notices under Section 61. The Appellant challenged it as bared by time and stated that time taken in litigation before the Hon'ble High Court would not be counted for the purposes of section 66(1) (e) as appeals were dismissed by the Hon'ble Court being not maintainable. The arguments has not been accepted by the Hon'ble Tribunal and it has been held that only requirement of law is to see whether appeal or reference has been filed in the Hon'ble High Court . It has been further held that any evidence recorded without due service of notice or in the absence of assessee has no legal value. Assessee has not been provided a chance to cross examine the witness, even otherwise any statement wherein opportunity of cross examination has not been provided is an inadmissible document and can not be relied for the determination of any fact. Substituted service under Section 154 is effected where service of notice under normal manner is not possible.
2002 PTD 2379 (H.C.)	62(a)	In this case the Department tried to initiate proceedings under Section 62A of the Income Tax Ordinance, in the circumstances when earlier order was annulled by the learned Tribunal which was not challenged by the department before the Hon'ble High Court under Section 136. It has been held by the Hon'ble High Court that such action was ultra vires and without jurisdiction as finality is attached to the order of the appellate order and relief granted by annulling the assessment was finally closed once for all.
2002 PTD 2384 (H.C.)	80CC & WWF	The Hon'ble Lahore High Court through this judgment has re-affirmed the proposition of law that Workers Welfare Fund is not leviable on the income assessed and taxed under Presumptive Tax Regime.

CITATION	SECTION	ISSUES INVOLVED
2002 PTD (Trib) 2422	156	In this case, the Assessing Officer proceeded to rectify the orders for assessment year 1989-90 to 1991-92 on the ground that the depreciation claimed by the assessee and allowed by the Department was in excess and that un-absorbed depreciation allowance cannot be carried forward to be adjusted against the profit of Post-tax Holiday period and the accumulated business loss would not be carried forward and adjusted against the profit of the post holiday period. The Assessing Officer relied upon Circular No. 23 of 1998. The Commissioner of Income-tax (Appeals) held that the action was illegal on the basis of judgement of Hon'ble Supreme Court of Pakistan reported as 1992 PTD 570. Since the Assessing Officer had framed a different opinion from the previous year it was also observed by the Commissioner of Income-tax (Appeals) that the Assessing Officer has in fact rectified the figures of the years 1985-86, 1986-87 and 1987-88, which were beyond limitation period and have attained the finality. Thus it was past and closed transaction.
2002 PTD (Trib) 2428	Para CCC and Para (E) of Part I of First Schedule	The Hon'ble Tribunal while deciding the departmental appeal observed that the issue in question in respect of carried forward of loss from pre-tax period to post-tax period was a settled issue by the Tribunal in case reported as 1999 PTD (Trib.) 1588 where the Full Bench of the Hon'ble Tribunal had held that Circular No. 23 of 1988 was ultra vires of the law, therefore, action of the assessing officer was not approved and the Commissioner of Income-tax (Appeals) order was confirmed. It has also been held that amendment made in law in Rule 30A of the Third Schedule brought in 1992 cannot be given retrospective effect. It has been further held that since the assessee had filed appeal before the first Appellate Forum, the assessment order merged with the order of the Appellate authority and, thus leaves no corner for rectification.
2002 PTD (Trib) 2335	66A	The Hon'ble Tribunal has considered the issue in respect of interpretation of Para (CCC) and Para (E) of Part-I of the First schedule which refers to the chargibility of tax under Section 80-C on account of execution of contracts -Value of contract does not exceed 30 million, the tax rate is 5% of the income and where the contract exceeds 30 million, the tax rate is 6% of the said income. The Hon'ble Tribunal held that tax value of the contract which is determining factor for application of rates on 5% or 6% as the case may be on the income representing the payment of account of execution of contracts. After examining each contract independently, the action of Section 52(a) taken by the assessing officer was directed to be revised.
2002 86 Tax 69 (Trib)	66A	Income of Commercial Plaza - Assessing Officer assessed share of Income in the hands of individual rather than in the hands of A.O.P. on the ground that share in the property was definite and ascertainable. IAC cancelled assessment under Section 66-A on the ground that the property had been constructed as a single unit collectively by the individuals members of AOP. The action of IAC was upheld by the learned Tribunal and held that alienation of shares of the individual members did not change the basic character of the AOP which was that of a collective effort by all members to construct a Commercial Plaza and dispose off the same on strictly commercial lines.
2002 PTD (Trib) 2679		Failure to comply with the mandatory provision of statute, such as proper issuance and service of notice, <u>entail annulment of order and not setting aside</u> . Order of CIT(A) setting aside the case vacated and assessing officer was directed to accept the declared version of the assessee.
2002 PTD (Trib) 2662	80D	In this case assessee non-resident Corporation incorporated in USA has setup a satellite in the space over Indian Ocean in earth orbit, which has various transponders to facilitate the transmission of signals. The assessee Corporation allocated some frequencies to its customers in Pakistan which are used by the customers to transmit or retrieve the signals which are said to be internet signals. The assessee corporation charged monthly services fee from its customers for the use of facility. The assessing officer treated such receipt as Fee for technical services taxable u/s 80AA read with 12(5). The main dispute was whether the receipt of the assessee are in nature of industrial and Commercial Profits which could attract the exemption under the Double Taxation Treaty or whether the receipts are Fee for Technical Services. The learned Tribunal after examining the technicalities as to whether income arises in Pakistan or not, to the nature of receipt, held that such fee received by the non resident is Commercial Profit. (Note: <u>Readers are requested to go through this important judgment which relates to Cyber transactions</u>).
2002 PTD 2250 (H.C.)	24(e) read with Rule 20	In this case the learned Tribunal has upheld the action of charge of surcharge on tax imposed under Section 80 D.
2002 PTD (Trib) 2302	16	In this case the Hon'ble High Court has interpreted the provisions of section 24(e) read with Rule 20 in respect of head office expenditure and have elaborated the procedure for calculating and working out the head office expenses. It has been further held that purposes of computing the average head office expenditure, the expenditure allowed for last three years shall be taken in Pak Rupees and not in Foreign Currency.
2002 PTD (Trib) 2302	16	Compensation, Leave Encashment and Gratuity Fund held to be taxable Pension receive from Pension Fund approved by CIT held exempt under Clause 26 of Part I of Second Schedule. The addition out of Benevolent Fund set-aside for verification and it was further directed that if it is proved the payment has been received from Fund established under the provisions of Clause 26A of Part I of the Second Schedule, same may not be taxed.
DECISION OF FEDERAL TAX OMBUDSMAN		
2002 PTD 2274 FTO	7 and 8 of the Finance Act, 1999	It has been held by the Hon'ble FTO that <u>Capital Value Tax can be demanded by Deputy Commissioner of Income-tax</u> , however, additional tax can only be recovered from Registering Authority under the provision of section 7 & 8 of the Finance Act, 1999.

Seemingly against Section 21 which says for assessment as AOP. not

CITATION	SECTION	ISSUES INVOLVED
2002 PTD 2282 FTO	108, 139	Complaint against alleged maladministration under Section 108 for non-filing of statement under Section 139. It has been held that since in the facts and circumstances the manager of Branch of Bank was responsible for paying salary under his own signature and designation same could only be verified from such person. Complaint did not warrant any action.
2002 PTD 2307 FTO	103	No order under Section 103 to withhold refund can be passed for indefinite period, Circular No.4 of 1999 referred.
2002 PTD 2321 FTO	38,40.40A	Scope of Section 38, 40 and 40 A of the Sales Tax Act, 1990 elaborated.
2002 PTD 2332 FTO		Repeated inquiry made by the Department which were based on the irrelevant and false grounds caused harassment to the tax payer and amount to maladministration.
2002 86 TAX 167 FTO	65	In this case, the Hon'ble Federal Tax Ombudsman has very elaborately explained the provisions of Section 65 and after considering the facts and circumstances of the case has held that assessment under Section 62 cannot be reopened under Section 65 on the basis of Collector's rate. The second and main question is whether on the basis of Collector's Rate the assessment can be re-opened and the declaration made by the complainant can be treated as a misdeclaration. The issue involved attracts section 65 of Income Tax Ordinance, which provides that no proceeding for re-opening the case under sub-section (1) shall be initiated unless definite information has come into the possession of the Deputy Commissioner. The term definite information has been subject matter of judicial pronouncement by the Superior Courts. It is now well settled that if an assessee has declared the value without any concealment and the assessment has been conclusively completed by the Income Tax Officer in the absence of the discovery of any new facts which can be treated as definite information there is no scope of re-opening under Section 65 on the ground referred in Section 65 (1) (a) & (b). It was further held that any change of opinion on the same material by the Income Tax Officer will not warrant pressing into service section 65(1). (Central Insurance Co. & others V. CBR 1993 PTD 766=1993 SCMR 1232). It was further held that the terms definite information will include factual information as well as information about existence of a binding judgment of a competent Court of law/forum for purposes of section 65 of the Ordinance.
2002) 86 TAX 172 FTO		After examining the facts and circumstances of the case, the Hon'ble FTO has held that tempering with the record comes within the definition of maladministration.
2002 86 TAX 182 FTO	65	Show Cause Notice under Section 65 for ascertaining the correctness of information under Section 65 held to be completely illegal and un-warranted in law.
2002 PTD 2436 FTO	63	The Hon'ble FTO has observed in respect of exparte assessment though have element of guesswork, it was mandatory to make best judgment and honest estimate.
2002 86 TAX 186 FTO	63	Ex-parte assessment held to be not in accordance with law when it was without any inquiry conducted to find any expansion in the quantum of business.

SALES TAX

2002 PTD (trib) 2270 Sales Tax Tribunal	11 and 46	The Assistant Collector passed an order which was based on certain quantity of goods manufactured and supplied. The value of goods exceeded Rs.100,000 and by virtue of SRO No.994(I)/92 dated 8.10.1992, the jurisdiction vested to Collector Sales Tax as such the learned Tribunal set-aside the action for denovo consideration.
2002 PTD 2311 Sales Tax Trib	3 and 4	Department determined the value of metal containers on the basis of market survey as well as prices fixed in the meeting with manufacturers, method held to be illegal.
2002 PTD (Trib) 2262 Sales Tax Tribunal	7 & 8	Appellant engaged in the production and export of textile and also generates electricity which is consumed in the manufacture of taxable supply u/s 7 and 8 of the Sales Tax Act. It has been held that appellant is entitled to the refund of in-put paid on furnace oil which is used for the purpose of making taxable supplies.
2002 PTD (Trib) 2407 Sales Tax Tribunal		In this case, the question under consideration was whether the Airconditioners installed in Laboratory of the Factory and High Voltage Cable fall under stock-in-trade by virtue of SRO 578 (I) of 1998 dated 12.6.1998. It has been held that admissibility of input tax pertains to the items used exclusively for the production of taxable supplies and it was held that Airconditioners were not used for the aforesaid purposes, the input tax credit was declined. However, High Voltage Cables were found to have been installed by the Unit as from the Power House to Transformer and than to Production Hall, the input tax was allowed – Concept of stock-in-trade viz-a-viz input tax credit explained.

CITATION	SECTION	ISSUES INVOLVED
2002 PTD 2440 (H.C.)	2 & 3 of the Sales Tax Act, 1990	<p>The Hon'ble High Court, after examining the provisions of Section 2 & 3 of the Sales Tax Act has held that the Sales-tax is not chargeable on the advances received by the petitioner without going into existence of the transaction of the sale. The Hon'ble High Court decided the issue and the petitions in the following manner:</p> <ol style="list-style-type: none"> 1. The petitioners are liable to pay the sales tax under section 3 of the Sales Tax Act, 1990, on taxable supplies at the time when the transaction of supply takes place. 2. The transaction of supply shall come into existence when a contract of sale of goods comes into existence i.e. when the supplier transfers or agrees to transfer the specified goods to the buyer or a lease or other disposition of goods in furtherance of the business if carried out for consideration or the other conditions prescribed in section 2(33) of the Sales Tax Act, 1990 are satisfied. 3. Where a transaction of supply takes place under a contract of sale, meaning thereby, transfer of goods from supplier to buyer or where an agreement to sell takes place meaning thereby, that the transfer of goods is to take place at a future time, the sales tax shall be charged on the happening of any of the following events:- <ol style="list-style-type: none"> (a) When a delivery of goods is made; or (b) The price is paid in full. 4. If after coming into existence of the transaction of sale, as explained above any part payment is received by the supplier from the buyer, the supplier shall be liable to account for the part payment in the return of tax for that tax period and the sales tax shall be charged accordingly. 5. If no transaction of supply has taken place and the supplier has received any advances or deposits from the buyers, such advances/deposits are not liable to the charge of sale tax. However, as soon as a contract of sale or agreement to sell is executed with the stipulation of adjustment of full or part payment from the advances/deposits, the said adjustment in full or in part shall be deemed to be in pursuance of the transaction of supply and such amount shall immediately become liable to the imposition of sales tax. 6. Whether the deposits/advances received by the petitioners were in pursuance of any transaction of supply or were mere advances/ deposits in pursuance of any Dealership Agreement or any Agency Agreement or any other arrangement, is a question of fact. We would not like to give any finding on this question of fact and the concerned tax officials shall decide such question of facts, after obtaining necessary particulars and giving opportunity of being heard to the petitioners and shall decide the question of chargeability to sales tax or otherwise of the advances/deposits in the light of findings.
2002 PTD 2457 (H.C.)	7 of the Sales Tax Act, 1990	<p>In this case question in respect of claim of refund of Sales-tax on the basis of invoices came before the Hon'ble High Court of Sindh and the Hon'ble High Court after examining the provisions of Section 7 of the Sales Tax Act held that the provision contained in subsection (2) of section 7 is mandatory in nature. Subsection (2) of section 7 is couched in negative language and specifically prescribes that registered person shall not be entitled to deduct Input tax from output tax unless he holds a tax invoice. It has been held that therefore, subsection (2) of section 7 prescribes a particular manner of claiming deduction/adjustment/refund and on plain reading of the provision, it is abundantly clear that the non-compliance disentitles a registered person from deducting input tax from output tax. It has been further observed that on plain reading of the above provision further shows that, the conditions precedent for claiming deduction etc. of input tax is that the claimant should hold a tax invoice, meaning thereby that, he should be in possession of the tax invoice. The invoice has been defined in section 2(40) to mean, a document required to be issued under section 23. The definition is conclusive meaning thereby that no other document can be treated as a tax invoice. It is admitted position that under Section 23, a tax invoice should contain name, address and registration number of the recipient. It is further admitted proposition that under second proviso to section 23(1) not more than one tax invoice shall be issued for taxable supply.</p>
2002 PTD 2694 FTO		<p>Delay in rectification and issuance of refund held to be without reasonable cause and due to negligence of the department, therefore falls under maladministration.</p>

WEALTH TAX

2002 86 TAX 165 (H.C.)	17B	<p>The Hon'ble High Court has held that powers contained in Section 17-B of the Wealth Tax Act, 1963 was to take effect from 1st July, 1992 and, therefore, the IAC had the power under Section 17-B only for assessment year 1992-93 onwards.</p>
2002 PTD (Trib) 2370	2	<p>In this case argument was that assessee Company, has given the building on lease as such they were not taxable under the Wealth-tax Act. The Hon'ble Tribunal after examining the meaning of the terms "lease" and "rent" held that both the terms are interchangeable and falls within the definition of the term "let out". Thus Company was chargeable to Wealth-tax.</p>

CITATION	SECTION	ISSUES INVOLVED
2002 PTD (Trib).2390	Rule 8(3) Wealth Tax	Valuation of godown by bank for loan purposes adopted for wealth tax purposes - Tribunal held that neither the value of godown can be assessed on the basis of bank report nor it could be estimated in accordance with the history of the case without any cogent reason, because wealth tax law prescribed it's own method of valuation which is binding on the assessing officers
2002 PTD (Trib) 2695	35 of the Wealth Tax	Proceedings under Section 35 of the Wealth-tax Act initiated on the recommendation of the audit party held to be illegal and approved by the Hon'ble Tribunal.
2002 PTD (Trib) 2413	2	<p>Wealth-tax – Exemption of assets and cash credit out of foreign remittance from Wealth-tax under Clause 7(i) read with 7(ii) of the Second Schedule. The Hon'ble Tribunal, after examining the statutory provisions has held that exemption would be available on the basis of valuation date. In the instant case, the assess received foreign remittance on 29.12.1992 and relevant valuation date for the assessment of his assets fall on 30.6.1993 so the first year of exemption for his remittances under Clause 7(i) would be assessment year 1993-94 and, therefore, the exemption would be available for the following 5-year upto the assessment year 1998-99.</p>
2002 PTD (Trib) 2528	2	After examining the statutory provisions of Wealth Tax it has been held that Trust cannot be treated as Company for the Wealth Tax purposes.
2002 PTD (Trib) 2512	14,17	<p>In this case important question of jurisdiction arose before the learned Tribunal, assessee company had filed return of Wealth Tax in compliance of notice u/s 14 and challenge was made that correct procedure was to issue notice u/s 17. Various issues arose which were formulated by the learned Tribunal which has been answered after examine plethora of case laws cited by the appellant's counsel. The question and their answers are briefly given below.</p> <ol style="list-style-type: none"> Whether the provisions of section 14(2) of the Wealth Tax Act 1963 are similar to the provisions of section 56 of the Income Tax Ordinance, 1979? Conclusion: The provisions of section 14(2) of the Act are materially different from the provisions of section 56 of the Income Tax Ordinance, 1979. Whether can section 14(2) of the Act and section 17 of the Act simultaneously give jurisdiction to the assessing officer? Conclusion: Assumption of jurisdiction in different periods of times is subject matter of two different provisions of law. During the relevant financial year proceedings for procuring the return are to be taken under section 14(2) and after end of the assessment year the jurisdiction can be assumed only under section 17. There is no concept of having concurrent/simultaneous jurisdiction under both the provisions of law viz. 14(2) and 17 of the Act. Can assessment proceedings be initiated by issuing notice under section 14(2) beyond the relevant assessment year? Conclusion. The assessment proceedings cannot be initiated beyond the assessment year by issuing a notice under section 14(2) of the Wealth Tax Act, 1963. Whether assuming jurisdiction under a provision other than the legal provision of law is a technical mistake which need not be looked into by the appellate courts? Conclusion: Assuming jurisdiction under other than the legal provision is not a procedural mistake and being fatal to the whole proceedings cannot be ignored by the appellate authorities. Can the assessee challenge the jurisdiction after filing the return in response to an invalid notice? Conclusion: It is also the right of the appellant to be treated in accordance with law without any discrimination. For argument's sake if it is considered that on the basis of submission of his return on receipt of an invalid notice, the proceedings cannot be challenged then would amount to discrimination against the person who submits return vis-a-vis a person who does not submit a return in response to an valid notice. Can an order passed without validly assuming jurisdiction stand the test of appeal? Conclusion: Even consent of the assessee can not give jurisdiction to an authority which is not legally vested with the jurisdiction. 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. Waiver even where both the sides had agreed to waive a portion of a statutory provisions, cannot confer jurisdiction which according to statute is not there. Is an assessee entitled to call in question the jurisdiction of the wealth tax authority after he has made the return of net wealth, notwithstanding the provisions of sub-section (5) of section 10 of the Act?

CITATION	SECTION	ISSUES INVOLVED
		<p>Conclusion: It may be stated that the assessing authority has jurisdiction over the case in two ways, firstly as officer incharge over the area or cases and secondly by exercising the statutory powers for assessment. Sub-section (5) of section 10, included in the Chapter-III (Wealth tax Authorities) pertains to assignment of administrative jurisdiction to an assessing officer by his superior authorities. This means the jurisdiction assigned generally to a circle in the field pertaining to the area or persons as prescribed in clause (c) of sub-section (1) of section 10. 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.</p>
2002 PTD (Trib) 2292	17-B	<p>In this case the Hon'ble Tribunal after examining the facts of the case held that action of Section 17B was not sustainable in law. It has been held that agreement to sale though was registered but would not be considered equivalent to a registered deed which transfers the title of property from seller to purchaser and without which a mutation of Revenue record could not take place. Agreement to sale could not confer any right on the assessee and he could not be considered to be full owner of the property. Mere possession of property declaration by the assessee in his Wealth Tax return was not sufficient to bring the property within the definition of net wealth has defined in section 2(6).</p>

CORRIGENDUM

Members are hereby informed that due to typographical error, the case law 2002 PTD 976 was incorrectly reported in News & Views in Vol. # 3/2002 on page no. 7. Any inconvenience caused to any member due to the inadvertent error is deeply regretted. The same may kindly be read as follows -

CITATION	SECTION	ISSUES INVOLVED
2002 PTD 976	2, 3, 47	After thoroughly examining the provisions of Sections 2, 3, 7, and 47 it has been held that Sales tax is not leviable on disposal of fixed assets.

FUTURE CPE ACTIVITIES

DATE	SEMINAR/ WORKSHOP	CHIEF GUEST/ SPEAKERS	VENUE
January 13, 2003	Seminar on E-Commerce	To be Announced later	Conference Hall, Ground Floor, New Income Tax Building, Karachi.

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 21st – 22nd 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.

DIARY, 2003

Insha Allah the Diary, 2003 will be available for distribution on or after 27th December, 2002. Members are requested to collect the same. Like earlier years the Diary Committee has printed extra diaries for the worthy members which will be available at cost. Place your orders now !

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.

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