



ITBAK's

News & Views

Members' Assistance Committee

Mr. Haider Ali Patel (Convenor)
Mr. Abdul Qadir Memon
Mr. Syed Waseem Hashmi
Mr. Ali A. Rahim
Mr. Arshad Siraj Memon
Ms. Yasmeen Ajani

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 Committee, I am pleased to present the combined issue for May and June, 2002 of "ITBAK'S News & Views".

As promised by us, we are continuously endeavoring to provide update information to the Members with regard to latest Circulars, Notifications and Case Laws on which we have been able to lay our hands.

In the first issue we had requested worthy members to provide us copies of important unreported decisions and clarifications that you may be aware of. We once again reiterate our request to all fellow members to assist us in this regard as this would enable us to share the valuable information with other members through this publication.

Finally, I being the Convenor take this opportunity once again to thank the members of the sub-committee especially to Mr. Arshad Siraj, Advocate and Ms. Yasmeen Ajani for putting in a lot of time and effort in compiling information with regard to case laws and notifications. I also thank the President Mr. Abdul Qadir Memon and other members of the Managing Committee for their continued assistance and guidance in our endeavor.

With best regards
Haider Ali Patel, ACA

SUMMARY OF CIRCULARS /NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
INCOME TAX			
Circular No.6	04.05.2002	Competent Tax Authorities of Pakistan and AJ&K will issue exemption certificates to their taxpayers, and both authorities would accept these certificates. Similarly, credit of taxes paid in Pakistan & AJ&K will be allowed by respective authorities on the basis of production of original challans for verification.	66
Circular of RCIT Corporate Region, Karachi, addressed to all CIT's, under Ref No.SO-1/1(6)/P. / 2001-02/6078	29.04.2002	Instructions issued regarding major irritants faced by Tax-payers, such as for (a) Claim of credit for tax deduction at source, (b) Delay in issue of Exemption Certificates, (c) Failure to pass Rectification/Appeal-Effects Orders, (d) Levy of Penalty for defaults in filing prescribed statements, (e) Uniformity of interpretation of legal issues, (f) Undue resistance in allowing change of income year, (g) Repeated indiscriminate notices u/s. 61 & 62, and (h) Disposal of audit and normal cases without proper confrontation.	67
SRO 278(I)/2002	20.05.2002	Exemption under Clause.78E in respect of profit or interest on Pak Rupee A/c or deposits created by conversion of a foreign currency account or deposit held on 28.05.1998, foreign currency deposits, which are not exempt under clause 78B.	68

Income Tax Bar Association Karachi, Bar Chambers, New Income Tax Building,
Shahra-e-Kamal Ataturk, Karachi. – Tel: 9211792 – Email: itbarkhi@cyber.net.pk

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
SALES TAX			
SRO 259(I)/2002	11.05.2002	The International Tender of Afghan Refugees Rules, 2001 now also made applicable to supplies of taxable goods made by registered persons against International tenders to Euron Aid for Afghan Refugees.	69
Instruction No. 31/2002	11.04.2002	Supply of Goods to PIA for consumption aboard during International flights, shall be Zero-rated subject to customs procedure.	70
Instruction No.32/2002	23.04.2002	Supplies made by Contractors under International Tenders are zero-rated but supplies made to the said contractors are neither exempt nor Zero-rated. However, contractors may claim refund of sales tax paid on such supplies made against international tenders.	71
Instruction No.33/2002	27.04.2002	Supplies of stores to PNSC for consumption aboard, a conveyance proceeding to a destination outside Pakistan are zero-rated, subject to relevant custom procedure for export/supply of ship stores and relevant sales tax provisions. However, stores used in the port areas are not eligible for zero- rating.	72
Instruction No.34/2002	27.04.2002	Supplies of Goods specified in SRO 389(I)/ 2001, dated 18.06.2001 to unregistered persons are subject to sales tax @ 20% and further tax @ 3%, aggregating to 23%.	73
Instruction No.35/2002	27.04.2002	Refund claim may be filed u/s. 66, for extra 1.5% Further Tax paid on supplies made to unregistered persons on 18.06.2001 (due to belated exemption of 1.5%) which will however be decided in accordance with law. But if sales tax burden has already been passed to buyer, then no refund is admissible under Section 3B of the Sales Tax Act, 1990.	74
Instruction No.36/2002	03.05.2002	Fork Lifter Truck does not fall in the definition of "Plant & Machinery" and is therefore, not entitled for exemption under SRO 987(I)/99 dated 30.08.1999.	75
Instruction No.37/2002	07.05.2002	Purchases of taxable goods from unregistered persons (without payment of sales tax) OR from turnover taxpayers are required to be mentioned in the column "All Other Purchases" in the Sales Tax Return.	76
Instruction No.38/2002	08.05.2002	Concerned Collectorate must be informed of the changes in particulars of Registration within 14-days of the change for amendment in Sales Tax Registration. Multiple Tax Activity (Importer & wholesaler) under only one registration number is appropriate.	77
Instruction No.39/2002	08.05.2002	(i) Rejected cases under SRO 392(I)/2001 and 395(I)/2001, dated 18.6.2001 may properly be disposed of by issuing appealable orders, in accordance with Sales Tax General order No.1/2001.	78
		(ii) Cases pending in adjudication/appeal etc. may also be considered under relief notification and in case, qualifying conditions are fulfilled, then subject to verification thereof, liability stands exempted to the extent specified, and all quasi-judicial proceedings become infructuous to that extent.	
2002-PTD- (JOUR)-63 & 2002-85-TAX- (EDIT)-147	21.03.2002	Registered restaurants making supplies of taxable good are entitled to adjust input tax paid on electricity consumed within its premises, in accordance with the conditions and procedure prescribed in Special Procedure for Collection and Payment of Sales Tax (Electric Power) Rules, 2000.	79

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
Instruction No.40/2002	14.05.2002	Castings for automobiles and tractors are classified under PCT heading 72.07 and therefore, chargeable to sales tax @ 20% under SRO 389(I)/2001 as amended by SRO 79(I)/2002 dt 02.02.2002.	80
CORPORATE LAW			
Circular No.8 of 2002	16.04.2002	Companies Easy Exit Scheme (CEES) partially modified for acceptability of Declaration of Chief Executive/Director, duly verified by an Affidavit administered before, Oath Commissioner instead of earlier condition of such Affidavit administered before Class I Magistrate, in view of practical difficulties.	81
Circular No.9 of 2002 Circular No.10 of 2002	29.04.2002 15.05.2002	Companies Easy Exit Scheme (CEES) for easy exit of inoperative/dormant companies due to expire on 30th April, 2002, first extended upto 15th May, 2002 and then further extended upto May 31, 2002.	82

SYNOPSIS OF IMPORTANT CASE LAW

CITATION	SECTION	ISSUES INVOLVED
INCOME TAX		
(2002) 85 TAX 309 FTO	132 – 138	Where a case is remanded with specific directions for deciding a particular issue, the assessing officer has to restrict the proceedings with in the four corners of the directions. Any attempt to ignore, cross, exceed, or reduce the directions is illegal, unauthorised and beyond his jurisdiction. He has to follow the direction and cannot act contrary to it. If the direction is to reconsider a particular issue, then the concerned officer has to restrict the proceedings to that issue and cannot reopen the whole case. Such acts of omission and commission amount to maladministration
(2002) 85 TAX 191 TRIB	53(4)	Compensation u/s 53(4) was denied by the DCIT as well as CIT (A) on the ground that amendment made in this Section was retrospective for the purposes of Assessment year 1995-96. The Hon'ble Tribunal has held that the amendment was not retrospective and any circular or amendment in law, which proposes withdrawal of a facility from a particular date or time cannot be given, retrospective effect by the revenue officers on their own
(2002) 85 TAX 196 TRIB	30	In the case of a Power project, interest earned held to be assessable under Section 30, however the Hon'ble Tribunal has allowed the set off of interest expenses from the income
(2002) 85 TAX 202 TRIB	Sec 22, 23 & 24- Rule 20	Head Office Expenses cannot be allowed if same are not recorded in the books of accounts.
(2002) 85 TAX 214 TRIB	66A- Return under USAS	Order under Section 59(1) Universal Self Assessment Scheme was held to be order to be revised U/s.66A..
(2002) 85 TAX 219 TRIB	156, 118C of Second Schedule	In this case, income of the assessee was exempt under clause 118 C of the Second Schedule. The date of commencement was however not determined. It was during the assessment year 1997-98 and 1998-99 determined on 1.1.1992. By invoking the provisions of Section 156, the assessing officer observed that commercial production commenced from July 1992 and not from 1.1.1992. Plea of the assessee that semi – finished goods were produced and not fully manufactured goods not approved by learned Tribunal. It has been observed that it does not any way prove that the industrial undertaking had not gone into production.
(2002) 85 TAX 225 TRIB	27,30	Compensation received on termination of agency, the said receipts held to be capital assets and chargeable u/s 27 not u/s 30. Double taxation of imported supplies disapproved.

CITATION	SECTION	ISSUES INVOLVED
(2002) 85 TAX 245 TRIB	22 & 23	<p>In the case of bank, interest on sticky loans transferred to suspense account by banks in compliance with prudential regulations was not liable to tax as it was only actual recoveries out of same which shall be liable to tax whenever received.</p> <p>In the case of Provision for bad debts, it has been held by the learned Tribunal that it is the banks that can decide as to what part of its loan have become bad and under what circumstances he has to write it off.</p> <p>Computer by all means is a plant and machinery and is fully covered under the provisions of Third Schedule for the purposes of initial depreciation.</p> <p>The provision for diminution in value of investment is a mere provision and notional loss. It has been further held that even otherwise it is a capital loss and not an expenditure incurred.</p>
(2002) 85 TAX 252 TRIB	52 & 50	<p>Withholding tax basically is a mode of recovery and cannot be equated with the charge or tax demand after assessment.</p> <p>Person responsible for paying any income chargeable under the head salary is required to deduct tax at the time of making payment.</p> <p>Providing free unfurnished accommodation cannot be considered as a payment to the employee.</p>
2002 PTD 877	12(18)	Judgment of Lahore High Court on Advance for share deposit upheld by Hon'ble Supreme Court which held that before the amendment in Section 12(18), share deposit cannot be treated as loan
2002 PTD 951 LHC	65	Law prohibits reopening of assessment on doubts and suspicions; the information duly supported by record maintained by agencies discharging legal function cannot be termed as suspicious or uncertain. Phrase definite information refers to the information, which is sine qua non for the purposes of reopening. The information by itself may not be the reason on which any further tax liability is placed upon the assessee. The information could be a good basis to confront the assessee and in case of non-rebuttal can be made basis of enhancement of tax liability.
2002 PTD TRIB 885	66A	Issue regarding Public and Private Company examined viz a viz Government controlled management.
2002 PTD TRIB 912	59A, 66A	Order passed u/s 59A after expiry of limitation would be void order. Order u/s. 59A caters altogether different situations. Notice u/s 65 conformity on the same sets of facts duly confronted held mere change of opinion. The action of reopening was taken on the ground that ratio of net assets was in excess of ratio prescribed in para 7 of Circular 9 of SAS scheme, learned Tribunal held that phrase "Business Capital" and "Net assets" have altogether different connotation and are not at par.
2002 PTD TRIB 925	12(9A), 66A	CBR's circulars subsequent to the date of assessment not applicable retrospectively. Provision for diminution in value of investment of shares inadmissible.
2002 PTD TRIB 937	111, 116	Penalty order without approval of IAC is illegal.
(2002) 85 TAX 334 TRIB	66A, 27, 28	Expenses relatable to exempt source have to be apportioned towards expenses incurred for every exempt income. Cannot be allowed against taxable income.
(2002) 85 TAX 321-TRIB	62-63	In a case selected for total audit, the provision of Section 62, 63 comes into operation, once case is excluded it is excluded for all purposes and assessing officer can probe. The case remanded with direction that assessing officer should allow the assessee to re-determine his claim regarding capital. The assessing officer will be at liberty to assess the same keeping in view the source and explanation filed.

CITATION	SECTION	ISSUES INVOLVED
(2002) 85 TAX 293 TIRB	80 C, 52	<p>Sale and Lease back arrangement by no means come within the meaning of sale/supply. It is a financial arrangement not covered u/s 80C.</p> <p>The law under Section 52 does not provide for hypothetically charging an assessee in default. The provision of law is sort of penal action, which should not be taken unless definite evidence with regard to the default purchase/supply is available.</p> <p>When evidence of payment of tax by recipient is produced, the assessee has fulfilled the requirement.</p>
(2002) 85 Tax 285 (Trib)	66A	<p>When an earlier Officer on the same facts has formed a bonafide opinion, no revisional authority can intervene by calling it an error. Substitution of opinion cannot be made basis for cancellation of an earlier order.</p>

WEALTH TAX

2002 PTD TRIB 882	Rule 8(3)	Bald Estimate of property in view of Inspector report not approved.
2002 PTD 894 FTO	31A	Recovery can be made from major shareholder only when tax can not be recovered from the Company.
(2002) 85 TAX 316 TRIB	17B – Clause 7 of the 2 nd Schedule	Assessee claimed exemption under clause 7 of the Second Schedule of Wealth Tax Act for a house purchased through foreign remittances received in the account of assessee's husband. The learned ITAT held that person receiving the remittances is entitled to the exemption under Clause 7.
(2002) 85 TAX 308 TRIB	2(16)-17B	Agreement of sale cannot confer any right on the assessee and he cannot be considered to be full owner of the property. Mere possession of the property or declaration by the assessee in his return is not sufficient to bring the property within the definition of section 2(16).
2002 PTD 304 TRIB	18,16(3)	Penalty proceedings have to be initiated at the time of assessment. The case remanded by CIT (A) for the reason that assessing officer did not give his point of view, not a valid reason to remand back the case to the assessing officer.
2002 PTD TRIB 1567	3, 2, 17	If a person has already divested of his title in the property, it can not be considered to be belonging to the assessee and cannot be included in his wealth.
2002 PTD TRIB 1543	2(5)	If economic event specified in Section 2(5) are not available, no levy of wealth tax can be imposed. Concept of taxation is based on existing facts and not on far-fetched notional or imaginative facts. A person may have intention, but his taxability will be materialized when he has done some thing.
(2002) 85 TAX 193 TRIB	16	Reliance on the entries in record of rights for the purposes of ascertaining the type of land disapproved Entries in record of rights/ Form VII or Form II are simply for maintaining a record and would not be sufficient to declare or change the status of the land as residential.

SALES TAX

(2002) 85 TAX 321 FTO	Refund	In the facts and circumstances, it has been held that once exemption is granted, the recovery of duty or taxes paid if illegal, no limitation for recovery/refund.
2002 PTD 955	3,13(1), 33,34	The Sales Tax Department was giving different treatment to a same product i.e. breaklines/rool during taxable period and exempt period. The Hon'ble High Court of Sindh held that by adhering to the principles of consistency the department should have treated such products as an autopart during the tax-exempt period as well. It was further held that all laws particularly pertaining to fiscal matters and taxes should to be unambiguous and clear. Lacuna in drafting such law may have far reaching affect.

2002 PTD 967	46, 47	Whether Sales tax could not be determined on goods supplied is pure question of law. Promissory Estoppel only attracts where the government functionaries make promises, which have been acted upon, the functionaries are precluded from acting contrary.
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 leviable on disposal of fixed assets leviable.
2002 PTD TRIB 889	45	Under section 45 of the Sales Tax Act, 1990, proceedings are subject to review either by CBR or by respective Collector for assuming in respect of legality or appropriations of any decision or order passed by the Sales Tax Officer. There is no provision in the Sales Tax Act authorizing Sales-tax functionaries to review or reopen a past and closed transaction. The outcome of an audit observation and action of Additional Collector for issuing show cause notice held to be an act of assumption of wrong jurisdiction.
2002 PTD 920	3, 13	Sales tax levied on Gypsum challenged being ultra vires of entry 59 of the Forth Schedule of the Constitution Held that Entry 59 is irrelevant. Entry 49 vests the jurisdiction to levy sales tax, which is being levied on subject matter of taxable supply, incidence of Sales tax will follow. Sales tax is not levied on minerals but it contemplates charge on its taxable supply.
2002 PTD 1573	11(2), 36(1)	Condition in which cases cannot be remanded by an appellate or revisional authority elaborated by the Hon'ble High Court.
2002 PTD 1493 FTO	34, 34A	Failure to pay the tax would arise when the demand was raised and not paid but where an arrangement is under the with consent of the Department and Bank guarantee is accepted or undertaking is obtained in particular circumstances when the exemption is under consideration, it would be harsh to bring such case within the preview of Sec 34 which contemplates default in payment which is for willful negligence.
2002 PTD TRIB 1445	13	Floor covering comes within the definition of accessories Exemption granted vide SRO 109(I) 94 dated 8.2.1994.
2002 PTD TRIB 1455	7, 10, 33	Claim of input tax adjustment paid on purchase/import made in the previous month, disallowance of adjustment out of tax period. Held no justification existed for the department to demand the payment of entire amount of out-put belatedly adjusted by the assessee as they had claimed as a matter of right conferred on them u/s 7 read with Section 10 providing for carrying over the unadjusted excess input tax and its refunds besides their right of recovery u/s 66. Such demand by department amounted to double taxation. Where it was not clear from the assessment to which month the belated adjustment pertained and what was the quantum of adjustment, additional tax or penalty can not be imposed. No tax on Sale of fixed assets.
(2002) 85 TAX 458	45, 45A, 47	Section 45, 45A and 47- Power of Revisional jurisdiction u/s 45A by the Collector and by the CBR cannot be exercised with regard to a case where an appeal u/s 46 is pending. The revisional powers are confined to departmental proceedings. Orders recorded before the Collector (Appeals) u/s 45 are not departmental proceedings nor the Collector Appeals is an officer of Sales Tax. Similarly Revisional jurisdiction of the CBR can also be used only in respect of departmental proceedings and order made by subordinate officer to the Board.
(2002) 85 TAX 466	Sales Tax Special Order 1998	Appointment of Auditors. The auditors shall be appointed by the CBR through prescribed notification spelling out the terms and conditions of their employment as professional auditors.

The term of references should not go beyond the scope of their functions as special auditor as given in Sales Tax Special Order 1998 read with General Order No.1 of 1999, Sales Tax General Order No 9 of 1999 and SRO 206(I) 2001

The special auditor before taking upon the assignment will serve the appellant with notice and will not only restrict their investigation in accordance with the parameters settled in above instructions/rules but also observe the time limit as contemplated.

(2002) 85 TAX 492	10	The Hon'ble court held that substituted Section 10 of the Sales Tax Act provides carrying forward the excess amount of input tax to the next consecutive month. Input tax was not confined to a tax period of a particular month, it could be carried forward for the next six months.
(2002) 85 TAX 494	28	Preliminary question pertaining to service of notice on a party is question of fact, but when an issue pertaining to jurisdictional a notice is raised, it becomes mixed question of law. The service of notice on the assessee shall be condition precedent for assumption of jurisdiction. The service means valid and proper service as required under the law not otherwise. Concept of jurisdictional notice explained.
2002 PTD 1530	13	The matter of exemption from payment of Sales Tax will be considered with reference to the date of opening of letter of Credit.
(2002) 85 TAX 316 FTO		The Hon'ble Federal Ombudsman has observed that it is high time that complainants must realise not to make frivolous and false applications and after making complaint not to withdraw on false grounds or under pressure. It has been further observed that officers concerned should be fair and adopt a policy of not to meddle in investigation by pressuring any one directly or indirectly
2002 PTD 1450 FTO	3,25,35	Jurisdiction of Federal Tax Ombudsman explained. The Ordinance is in the nature of welfare legislature intended to provide redress and relief to taxpayers against excess, illegality and arbitrary actions of the tax authorities. Departmental challenged the jurisdiction. It was held that if departmental view point is accepted it will not only be against the intention of legislature but will result in absurd results and confusion

FUTURE CPE ACTIVITIES

DATE	SEMINAR/ WORKSHOP	CHIEF GUEST/ SPEAKERS	VENUE
June 18, 2002	Post Budget Seminar, 2002	Vakil Ahmed Khan, Member CBR (Chief Guest) Syed Masood Naqvi (Speaker) Mohammad Athar Saeed (Speaker)	Hotel Avari Towers, Karachi
July 15, 2002	Personel Health and Individual Development	To be announced later	To be announced later

The Members Assistance Sub-committee claims no responsibility to the correctness of the contents published. The information provided is non-exhaustive and members are advised to refer to the respective documents/case law cited for understanding the issue involved.

Income Tax Bar Association Karachi, Bar Chambers, New Income Tax Building,
Shahra-e-Kamal Ataturk, Karachi. – Tel: 9211792 – Email: itbarkhi@cyber.net.pk

Courtesy HABIB BANK LIMITED