



ITBAK's

News & Views

Members' Assistance Committee

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Mr. Syed Waseem Hashmi
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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 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

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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. (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.	78
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.

