



ITBAK's

News & Views

Member's 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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April, 2002

Message of the Convenor – Members Assistance Sub-committee

Dear Members,

On behalf of the Members Assistance Sub-committee, I am pleased to present the April, 2002 issue of "ITBAK'S News & Views".

As promised by us, we are continuing to endeavor 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 I had requested to provide us update on important unreported decisions and clarifications that you may be aware of. I once again reiterate my request to all fellow members to assist us in this regards as this would enable us to share the valuable information with the members through this publication.

Finally, I take this opportunity once again to thank the members of the sub-committee and specially to Mr. Arshad Siraj, Advocate for putting in a lot of time and effort in compiling information with regard to case laws. I also thank the President 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.4	05-04-2002	Re-investment allowance under Rule 5B of the Third Schedule to the Income Tax Ordinance, 1979 allows an allowance on investment for balancing, modernization and replacement (BMR Capital) as well as for expansion of machinery and plant made either from accumulated profits, borrowed funds or through increase in equity.	32
Circular No.5	11-04-2002	Procedure clarified for claiming of exemption under section 50(4) on supplies where tax under section 50(5) has been paid.	33
S.R.O.161/(I)/2002	20-03-2002	No deduction of tax required under section 50(6A) of the Income Tax Ordinance, 1979 on issuance of bonus shares on or after July 1, 2001.	34
S.R.O.168/(I)/2002	22-03-2002	Draft Rules for maintenance of books of accounts with effect from July 1, 2002 published for comments.	35
S.R.O.188/(I)/2002	01-04-2002	Presumptive tax imposed on resident persons engaged in the business of shipping.	36

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CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
SALES TAX			
Ordinance No.XVI of 2002	21-03-2002	Amendments made to the relevant provisions of Sales Tax Act, 1990 to bring the substances registered as Drugs under the Drugs Act, 1976 (XXXI of 1976) and medicaments classified under any headings of Chapter 30 of the First Schedule to the Customs Act, 1969 (IV of 1969) within the ambit of Sales-tax.	37
S.R.O.176/(I)/2002	28-03-2002	Withdrawal of exemption from penalty chargeable under section 33 of the Sales Tax Act, 1990 for the financial years 2000-2001, 2001-2002 to registered, enrolled or enlisted contractors.	38
S.R.O.178/(I)/2002	29-03-2002	Value of Baggage used as in-house fuel fixed at Rs.200 per ton.	39
S.R.O.190/(I)/2002	02-04-2002	Supply of certain categories of goods, exported by air or via land sent to Afghanistan and Central Asian Republics not to be treated as zero- rated under section 4 of the Sales Tax Act, 1990.	40
S.R.O.202/(I)/2002	04-04-2002	Exemption allowed from further tax chargeable under sub-section (1A) of section 3 of Sales Tax Act, 1990 in excess of one and half percent on taxable supplies made by registered person on 18 th June, 2001.	41
S.R.O.207/(I)/2002	05-04-2002	Exemption from Sales Tax allowed on import and supply of ships of gross tonnage is less than 15 LDT and all floating craft including tugs, dredgers, survey vessels and other specialized crafts purchased of bare boat chartered by a Pakistani entity.	42
S.R.O.208/(I)/2002	05-04-2002	Exemption allowed to certain substances registered as drugs under the Drugs Act, 1976.	43
S.R.O.211/(I)/2002	06-04-2002	Exemption from Sales Tax allowed on supply of raw material for the basic manufacture of pharmaceutical active ingredients and for manufacture of pharmaceutical and on import of raw material specified in Notification No.SRO.416(I)/20001) dated June 18, 2001 which are liable to customs duty not exceeding 10% ad velorum.	44
S.R.O.215/(I)/2002	10-04-2002	Sales-tax not charged on loose or unbranded butter supplied by Noon Pakistan Limited upto 10-11-1999 inadvertently and as a general practice not required to be recovered from them for the period it is not charged provided that they have now started paying sales-tax on such supplies.	45
Instruction No.19/2002	15-03-2002	Cellular phone connections activated in Swat and used for making calls to other areas in Pakistan or being used in other areas in Pakistan are also liable to Sales-tax.	46
Instruction No.20/2002	22-03-2002	Tender price acceptable for levy of Sales-tax in case of sale of medicine to hospital and other institutions in bulk through tender. Samples of medicines provided free of charge to doctors not liable to Sales-tax. Supply of pharmaceutical products by importers liable to Sales-tax on retail price.	47

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
Instruction No.21/2002	28-03-2002	Adjustment of input tax on purchase of motor vehicles not permissible.	48
Instruction No.22/2002	29-03-2002	Exemption of Sales-tax withdrawn on all pharmaceutical products including Homeopathic, Aryurvedic, Unani and other traditional medicaments,	49
Instruction No.23/2002	29-03-2002	Manufactures allowed to affix stickers or stamp the new prices inclusive of Sales-tax on stocks manufactured prior to imposition of Sales-tax being supplied after imposition of Sales-tax.	50
Instruction No.24/2002	30-03-2002	Stock of pharmaceutical products lying outside the manufacturing premises or with distributors which are supplied after imposition of Sales-tax are also liable to Sales-tax.	51
Instruction No.25/2002	01-04-2002	Exemption from Sales-tax on supply of goods to National Programme for family planning and primary health is available only in respect of goods imported directly under grant in aid.	52
Instruction No.26/2002	01-04-2002	Contraceptives and accessories continue to remain exempt from Sales-tax.	53
Instruction No.27/2002	02-04-2002	Person engaged solely in rendering repair services are not required to get registered for Sales-tax purposes. However, where supply is also undertaken then registration for Sales-tax purposes is required.	54
Instruction No.28/2002	08-04-2002	Rice exporters not entitled to claim refund of Sales-tax charged on purchase of bags/sacks.	55
Instruction No.29/2002	09-04-2002	No deduction of Sales-tax at source can be made by purchasing department/organization from payments to supplier.	56
Instruction No.30/2002	10-04-2002	Sales-tax is chargeable on goods supplied after withdrawal of exemption even if payment was received in advance during the exemption period.	57

CORPORATE LAW

Circular No.1 of 2002	10-01-2002	International Accounting Standard (IAS) 22 "Business Combinations, IAS 36 "Impairment of Assets" and IAS 39 "Financial Instruments": "Recognition and Measurement", directed to be followed by all listed companies with regard to preparation of Balance Sheet and Profit and Loss Accounts for the accounting periods beginning on or after July 1, 2001.	58
Circular No.2 of 2002	31-01-2002	Companies Regularization Scheme now also applicable to regularization of defaults of companies committed upto December 31, 2001. Previously the scheme was applicable upto December 31, 2000.	59

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
Circular No.3 of 2002	21-02-2002	International Accounting Standard (IAS) 40 "Investment Property" directed to be followed by all listed companies with regard to preparation of Balance Sheet and Profit and Loss Accounts for the accounting periods beginning on or after January 1, 2002.	60
Circular No.4 of 2002	21-02-2002	International Accounting Standard (IAS) 22 "Business Combinations, IAS 36 "Impairment of Assets" and IAS 39 "Financial Instruments": "Recognition and Measurement" not required to be followed by listed companies with regard to preparation of their half yearly accounts for the six months ended December 31, 2001.	61
Circular No.5 of 2002	14-03-2002	Copies of news paper advertisement regarding notices of AGM or EOGM published by companies in news papers for the information of shareholder is now required to be sent to the Securities and Exchange Commission of Pakistan (SECP) within seven days of publication instead of the earlier requirement of atleast 21 days before the date of holding AGM or EOGM.	62
Circular No.6 of 2002	01-04-2002	Credit rating companies required to publicize all ratings assigned by them within the two working days of the notification of such ratings through publication in atleast one English and one Urdu National Newspaper. Copy of rating report required to be submitted to SECP and all Stock Exchanges within ten working days of the said rating notification unless directed otherwise by the SECP in any case.	63
Circular No.7 of 2002	01-04-2002	Companies Easy Exit Scheme launched by SECP for easy exit of inoperative/dormant companies.	64
No.22(10)SE/SMD/2002 (Revised)	28-03-2002	The Securities and Exchange Commission of Pakistan has directed all companies listed on stock exchanges in Pakistan to adopt the Code of Corporate Governance in order to establish a frame work of good corporate governance among listed companies.	65

SYNOPSIS OF IMPORTANT CASE LAW

CITATION	SECTION	ISSUES INVOLVED
INCOME TAX		
2002 PTD 557	135, 136	Procedure under section 135 and 136 explained in respect of filing Statement of Case on Question of Law.
2002 PTD TRIB 560 H.C. LAHORE	63	Whenever the assessing officer proceeds exparte, the onus shifts on him to justify his estimates. The fact that an order has been passed exparte is no basis for making lumpsum /adhoc addition.

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CITATION	SECTION	ISSUES INVOLVED
2002 PTD 562 H.C. LAHORE	16	Amount received under golden handshake scheme comes within the definition of Salary under section 16(2)(c). The assessee however has option to get it taxed at three years average rate as per Circular No.1 of 1996 and 15 of 1997 issued by CBR. ✓ S.H.S
2002 PTD 570 H.C. KARACHI	135, 136	Reference lies from the order passed under section 135. Reference under section 136(1) filed against order passed under section 156 was rejected as no reference under section 136(1) was filed against order passed under section 135.
2002 PTD TRIB 580	108, 139 to 142	Penalty under section 108 was confirmed when statements were filed in the jurisdiction of an assessing officer having no jurisdiction. Submission of statements in the jurisdiction of an officer having no relevance or jurisdiction over the case not termed as compliance of statutory provisions. ✓
2002 PTD (TRIB) 702	66A, 143B, 59A	Where there is no order under section 59A, <u>deemed assessment cannot be cancelled under section 66A.</u> Deemed order cannot be equated with an actual order for invoking jurisdiction of Section 66A. The principles of case reported as 1998 PTD 1201 reiterated.
2002 PTD (TRIB) 713	111	Penalty proceedings are quasi criminal in nature. Therefore, for imposing penalty, it is sine qua non to establish manes-rea. 1
(2002) 85 TAX 181 TRIB	66A	Jurisdiction of the IAC under section 66A cannot be extended to issues decided or modified by the CIT(A)-Principle of merger.
(2002) 85 TAX 164 TRIB	80C(5A)	It is trite law that substantive amendments in the fiscal statute shall have prospective effect. Insertion of sub-section (5A) in Section 80 C would be applicable from the date it was enacted i.e 1st July 1999 onwards, therefore, the assessment year would be 2000-2001. The amendment will not apply to assessment year 1999-2000.
(2002) 85 TAX 158 TRIB	80C	An industrial undertaking who imports raw material for its own consumption have been excluded from the ambit of Section 80C, if such an undertaking is engaged in manufacture of goods and materials or subjection of goods and material to any process, which substantially changes their original condition. Imports should be raw material which may be so processed that the final product is substantially different from the raw material. This does not cover the process of labeling or repacking of the same goods. Such imports held to be chargeable to tax under section 80C. Toll manufacturing is not chargeable to tax under section 80C.
(2002) 85 TAX 153 TRIB	108, 139, 141 & 142	No penalty can be imposed under section 108(b) for non-filing of monthly statements before the amendments were made in the rules through notifications dated 3-10-1998, 13-10-1998 and 2-12-1998. Infirmities and lacunae in the penalty order highlighted.
(2002) 85 TAX 137 TRIB	66A	If there is no formal order, provisions of Section 66A are not attracted. but 59(1) is 59(A) when actually made 66A is attracted.

CITATION	SECTION	ISSUES INVOLVED
(2002) 85 TAX 132 TRIB	111, 116	Notice of hearing and approval under section 111 read with 116 mandatory. Non-fulfillment makes order nullity in law and liable to be cancelled.
2002 PTD 629 FTO	96, 102	Refunds should be paid immediately alongwith the compensation under section 102. General instruction issued to the department not to unnecessarily withhold refund worked out at IT-30 so that State in not burdened with the obligation to pay compensation under section 102.
2002 PTD 824 FTO	103	Action under section 103 should be taken with utmost caution and only in appropriate case where circumstances justify such an action. The department should desist from abusing Section 103 as a routine measure to delay the issuance of refund legally due.
2002 PTD 804 H.C. KARACHI	59D	Declaration filed under the TAS-2000, cannot be rejected beyond 31.12.2000. Circulars issued by CBR in this regard examined by the Hon'ble High Court. A provision of statute should not be considered in isolation, until and unless any section/provision thereof is a complete code in itself. Any Scheme contained in a statute or sub-ordinate legislature should be considered in totality of the Scheme.
2002 PTD 798 H.C. LAHORE	19	Concept of notional rent under section 19 explained.
2002 PTD TRIB 789	80B	<p>Provision of Section 80B is not applicable to a company in respect of amount received on encashment of FEBCs on which tax was deductible under section 50(5B). The amount invested in FEBC cannot be probed in the hands of the company due to existence of Clause 6B of Part IV of Second Schedule read with Section 13 of the Income Tax Ordinance, 1979. However, In the case of a company, it is only the profit on encashment of FEBC which is taxable at normal rates.</p> <p>The principal amount on FEBC received on encashment is from source originating from the purchase of FEBC to which provisions of Section 13 are not inapplicable.</p>
2002 PTD 750 H.C. LAHORE	65, 66A	Assessing officer and Inspecting Additional Commissioner can re-open or revise the assessment under section 65 or 66A respectively.
2002 PTD 720 H.C. KARACHI	8	The beneficial view taken by the CBR, which is not patently violative of any statutory enactment, but is merely aimed at mitigating the rigours of law or implementing the law keeping in view pragmatic considerations, requires all respects and is binding on the functionaries employed in the execution of the Ordinance, including the assessing officer while involved in the assessment proceedings.
(2002) 85 TAX 242 FTO	59D	<p>The condition brought in vide Circular No.14 of 2000 that Tax Amnesty Scheme 2000 would not be available in the cases where appeals are pending. The Hon'ble FTO held that such condition was imposed adverse to the declarant which was not found in the original scheme, such adverse condition can be made by amending the scheme and not by way of clarification and explanation.</p> <p>Circular No.14 of 2000 held to be clarificatory nature, thus cannot be used against the assess/declarant. In the facts and circumstances of the case where the action was taken on the ground of pending appeals, the declaration was directed to be accepted.</p>

WEALTH TAX

(2002) 85 TAX 171 TRIB 2(16)(ii) Provision of Section 2(1)(16)(ii) clearly lays down that any debt which was either obtained by securing an assets not chargeable to tax or was obtained for acquiring assets which was not chargeable shall not be deducted from assets to arrive at figure of net wealth - thus inadmissible debt.

Debts representing loan from bank obtained by securing exempt assets such as Foreign Currency account are not allowable since Foreign Currency Accounts were exempt from Wealth tax.

(2002) 85 TAX 128 Sec. 3A(6), Rule 8(3) Guidelines to Assessing Officer for valuing the land and building.

SALES TAX

2002 PTD 608 H.C. LAHORE 46 Prayer for condonation of delay in filing appeals should be considered objectively by the learned Tribunal.

2002 PTD 609 2(16), 3 Limestone and Clay were intermediary produced for the Petitioner which was manufactured/produced during the process of excavation and it was in furtherance of taxable activity therefore, it was liable to Sales Tax under section 3. Limestone and Clay were also taxable identifiable/marketable goods on which tax could be levied. Therefore, once a taxable goods had been supplied by a person to itself, the same would fall within the definition of taxable supply. Where the sale had taken place or not between two persons but the fact remains that the excavation and brining limestone and clay to factory constitutes a taxable supply during the process of taxable activity. Taxable activity covered in form of those taxable activities, which were carried by even one person for his own business.

2002 PTD 632 H.C. LAHORE 46

- a) Tribunal is not vested with any powers to question the vires of SROs issued by the CBR under section 2(4).
- b) Provisions for further tax in Section 3 read with relevant SRO explained.

2002 PTD TRIB 892 56, 33(1) Adjudicating Officer could not have drawn any presumption of service of notice merely on the basis that the notice sent through registered post had not been received back as undelivered. Order held violative of law thus set-aside.

(2002) 85 TAX 263 H.C. LAHORE 2(16), 3 The assessee purchased plastic sheets on rolls which were fed to automatic machines and accordingly became a part of the manufacturing process for simultaneous packing of ghee so produced and plastic pouches neither manufactured distinctly nor produced in a shape or style that these could be stored or used independently. The action of the department that plastic pouches were being produced by the assessee and therefore they were liable to pay central excise as well as sales tax as an independent product though the oil and ghee produced by them was exempt from levy of these charges.

In a reply to a question that whether poly bags were taxable under the Sales Tax Act in the above scenario, the Hon'ble High Court disapproved the departmental point of view in this regard.

CONSTITUTION & SALES TAX

2002 PTD 654 H.C. LAHORE

Art 199,
Sec 3

- a) Non fulfillment of alternate remedy - High Court should exercise its jurisdiction under Article 199 where impugned Order is patently illegal and perverse.
- b) Principles regarding filing of Constitution Petition elaborated.
- c) Tendency of ignoring or by-passing the decisions of Superior Courts on the part of revenue authorities depreciated by Hon'ble High Court. Tendency needed to be curbed for better administration of justice, observance of discipline and maintain rule of consistency.
- d) Goods enjoying exemption under section 13(1) of Sales Tax Act, 1990 are out of purview of the Act.

CAPITAL GAINS

2002 PTD 700

G.T RULES
3 TO 9

Burden to justify levy of tax in fiscal matters and particularly levy of any tax on any citizen or assessee lies with the Assessing Authority.

Assessing Authority has to establish that the declared version of the assessee is not correct and to further prove that the assessment made by the Revenue was based on substance and material which is satisfying the judicial conscience.

OTHER IMPORTANT NEWS

Companies Easy Exit Scheme

As another step toward facilitation, SEC announces Companies Easy Exit Scheme (CEES) for striking off names of non-operational private and non-listed public limited companies from the Registrar of Companies. Application form and details of the scheme are also available with Firms of Accountants, Chambers of Commerce and Industry, Companies Registration Offices and also on SEC website www.secp.gov.pk

Application should be sent to the Registrar of the concerned CRO not later than

April 30, 2002

For Further information, please visit website: www.secp.gov.pk

*You can regularize
Your company by paying
just one time additional fee by
30th April, 2002*

*From 1st May to
30th June, 2002*

*two times additional fee
will be charged for
regularization
of a company*

FUTURE CPE ACTIVITIES

DATE	SEMINAR/ WORKSHOP	SPEAKERS	VENUE
May 20, 2002	Corporate Laws	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 members are advised to refer to the respective documents/case law cited for understanding the issue involved.

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Courtesy HABIB BANK LIMITED