E-News & Views

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A Publication of KTBA

A publication covering information on recent important judicial pronouncements, circulars and clarifications

FROM THE DESK OF THE PRESIDENT

Dear Members,

It gives me immense pleasure in sharing my thoughts with you on the efforts we have so far made in the interest of the Bar, its members and the profession. You would appreciate that we are highlighting core issues to the FBR and are taking all steps for resolution of the same. In order to acquaint our members with the knowledge of tax laws and other important subjects, CEP programs on different topics have also being held. Following the tradition, we have also launched Professional Development Program (PDP) which is in its culmination stage. With your continued support, we are hopeful that we will perform to the best of our abilities.

I would like to congratulate the entire team of E-news & Views and the convener in particular, for giving their time and preparing this issue of Enews & Views and hope that you will be having this publication on regular intervals. I wish all success to the team.

Looking forward working with you.

Yours in service,

Abdul Aziz Tayabani

FROM THE DESK OF THE CONVENOR

Dear Fellow Members,

I feel honored in presenting this issue of News & Views for the respected members of this august Bar.

We have compiled in this issue Circulars, Notifications, General Orders etc. concerning revenue laws of the country issued till June 2015.In addition, important case law dealing with Sales-tax, Customs, Federal Excise and Direct tax are also part of this publication.

I am sure that this issue would provide you information and knowledge that is required for dealing with the issues that we come across in our professional duties.

We welcome your suggestions and comments which indeed help us in our pursuit of improving the readership as well as quality of this publication.

Before leaving, I would like to thank E-News & Views Committee members of for their valuable input, continued efforts and support.

Yours in service,

Haider Ali Patel

Note: Members are advised to read complete Circulars and SROs/ Notifications for better understanding of respective issues

FEDERAL EXCISE CIRCULARSAND SROs

CIRCULAR/ NOTIFICATION/ SRO REFERENCE	SUBJECT
	During the period from 01 January 2017 to 31 December 2017, no circulars of Federal Excise have been issued by the Federal Board of Revenue
SRO 407(1)/2017 Dated: 29 May 2017	Changes in rates of federal excise duty on locally produced cigarettes notified
SRO 593(1)/2017 Dated: 01 July 2017	SRO 407(1)/2017 Dated: 29 May 2017 withdrawn

DIRECT TAX CIRCULARS AND SROs

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
Circular No.1 of 2017 Dated: 29 June 2017	Explanation regarding interpretation of certain provisions in Seventh Schedule of the Income tax Ordinance, 2001in the context of Islamic Banking.
Circular No.2 of 2017 Dated: 29 August 2017	Extension in the date of filing annual withholding statement of salary for the tax year 2017, which was due on 31 July 2017, till 31 August 2017.
Circular No.3 of 2017 Dated: 31 August 2017	Extension in date of filing income tax returns for the tax year 2017 upto 30 September 2017
Circular No.4 of 2017 Dated: 06 September 2017	Explanation regarding amendments made in provisions of the income Tax Ordinance, 2001 through Finance Act, 2017.
Circular No.6 of 2017 Date: 29 September 2017	Clarification regarding chargeability of yield or profit on Bahbood certificates / Pensioners benefit accounts under section 7B of the Income Tax Ordinance, 2001
Circular No.7 of 2017 Dated: 29 September 2017	Extension in date of filing income tax returns for the tax year 2017 upto 31 October 2017
Circular No.8 of 2017 Dated: 31 October 2017	Extension in date of filing income tax returns for the tax year 2017 upto 15 November 2017
	Extension in date of filing income tax returns for the tax year 2017 upto 30 November

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
Circular No.9 of 2017 Dated: 15 November 2017	2017
Circular No.10 of 2017 Dated: 16 November 2017	Extension in the date of filing of withholding tax statements for the month of October 2017 till 22 November 2017.
Circular No.11 of 2017 Dated: 30 November 2017	Extension in date of filing income tax returns for the tax year 2017 upto 15 December 2017
SRO 06(1)/2017 Dated: 09 January 2017	Exemption from collection of advance tax under section 236U of the Income Tax Ordinance, 2001 on collection of premium from non-filers in respect of i) Crop loan Insurance Scheme ii) Livestock Insurance Scheme
SRO 12(1)/2017 Dated: 10 January 2017	Criteria to avail reduced tax rates for Shari'ah compliant companies notified.
SRO 30(1)/2017 Dated: 18 January 2017	Amendments in Rules relating to taxpayers registration by Commissioner
SRO 37(1)/2017 Dated: 23 January 2017	Time period for applicability of reduced rate under section 236P of the Income Tax Ordinance, 2001 extended upto 31 March 2017.
SRO 92(1)/2017 Dated: 07 February 2017	Amendments in convention for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on Income between Pakistan and Uzbekistan
SRO 145(1)/2017 Dated: 16 February 2017	Notification of third protocol to the agreement between the Government of the people"s Republic of China and the Government of the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income.
SRO 166(1)/2017 Dated: 15 March 2017	Common reporting standards notified by FBR for furnishing of information by financial institutions including banks in terms of section 165B of the Income Tax Ordinance, 2001
SRO 209 (1)/2017 Dated: 28 March 2017	Notification of penal for alternative dispute resolution committee.
SRO 255 (1)/2017 Dated: 12 April 2017	Amendments in Rule 43 of the Income Tax Rules, 2002. Through this amendment, State Bank or any other banking company remitting the amount abroad shall paid the applicable tax before remittance.
SRO 289(1)/2017 Dated: 27 April 2017	Time period for applicability of reduced rate under section 236P of the Income Tax Ordinance, 2001 extended upto 30 June 2017.
	Amendments in Rule 78B relating to common reporting standards

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
SRO 452 (1)/2017 Dated: 08 June 2017	
SRO 602 (1)/2017 Dated: 03 July 2017	Time period for applicability of reduced rate under section 236P of the Income Tax Ordinance, 2001 extended upto 30 September 2017.
SRO 603 (1)/2017 Dated: 30 June 2017	Notification of convention between Ireland and Pakistan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income
SRO 688 (1)/2017 Dated: 20 July 2017	Amendments in Income Tax Rules, 2002. Draft Income Tax Return forms for tax year 2017 in respect of individuals notified.
SRO 708 (1)/2017 Dated: 27 July 2017	Amendments in Income Tax Rules, 2002. Draft Income Tax Return forms for tax year 2017 in respect of AOPs notified.
SRO 709 (1)/2017 Dated: 26 July 2017	Amendments in convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between Pakistan and Belarus.
SRO 819 (1)/2017 Dated: 17 August 2017	Amendments in Income Tax Rules, 2002. Income Tax Return forms for tax year 2017 for salaried/business individuals and AOP notified.
SRO 929 (1)/2017 Dated: 18 September 2017	Amendments in Income Tax Rules, 2002. Draft Income Tax Return forms for tax year 2017 in respect of companies notified.
SRO 951 (1)/2017 Dated: 19 September 2017	Notification of Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account information.
SRO 950 (1)/2017 Dated: 20 September 2017	Amendments in Income Tax Rules, 2002. Draft Income Tax Return forms for tax year 2017 in respect of individuals notified.
SRO 981 (1)/2017 Dated: 28 September 2017	Amendments in Income Tax Rules, 2002. Final Income Tax Return forms for tax year 2017 in respect of individuals notified.
SRO 982 (1)/2017 Dated: 28 September 2017	Amendments in Income Tax Rules, 2002. Final Income Tax Return forms for tax year 2017 in respect of companies notified.
SRO 983 (1)/2017 Dated: 29 September 2017	Time period for applicability of reduced rate under section 236P of the Income Tax Ordinance, 2001 extended upto 31 December 2017.
SRO 1173 (1)/2017 Dated: 13 November 2017	Amendments in Rule 7C of the Seventh Schedule to the Ordinance. Through this amendment, Super tax is applicable on banking companies for tax year 2017 as well.
SRO 1191 (1)/2017	Amendments in Income Tax Rules, 2002 notifying Rules in respect of country by country reporting requirement.

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
Dated: 16 November 2017	
SRO 1217 (1)/2017 Dated: 24 November 2017	Insertion of clause 103 in Part IV Second Schedule to the Ordinance. Through this amendment, the provisions of section 7B are no more applicable to yield or profit on investment in Bahbood Saving Certificate or Pensioners benefit accounts.
SRO 1314 (1)/2017 Dated: 22 December 2017	Amendments in Rule 43B of the Income Tax Rules, 2002. Through this amendment, applicable tax in respect of payment to non-resident is required to be withheld seven days before remittance.
SRO 1330 (1)/2017 Dated: 30 December 2017	Time period for applicability of reduced rate under section 236P of the Income Tax Ordinance, 2001 extended upto 30 June 2018.

INDIRECT TAX CIRCULARS AND SROS

	SUBJECT
	During the period from 01 January 2017 to 31 December 2017, no circulars of indirect tax have been issued by the Federal Board of Revenue.
SRO 21(1)/2017 Dated: 15 January 2017 SRO 91(1)/2017 Dated: 15 February 2017 SRO 125 (1)/2017 Dated: 28 January 2017 SRO 223(1)/2017 Dated: 31 March 2017 SRO 292 (1)/2017 Dated: 30 April 2017 SRO 408 (1)/2017 Dated: 31 May 2017 SRO 581 (1)/2017 Dated: 30 June 2017 SRO 713 (1)/2017 Dated: 01 August 2017 SRO 757 (1)/2017 Dated: 05 August 2017 SRO 867 (1)/2017 Dated: 31 August 2017 SRO 984 (1)/2017 Dated: 30 September 2017	Through these SROs changes in rates of petroleum products have been notified.

	SUBJECT
SRO 1331 (1)/2017 Dated: 31 December 2017	
SRO 36 (1)/2017 Dated: 23 January 2017	Amendments in SRO 1125/(I)20111 dated 31 December 2011. - Sales tax at the rates of zero percent shall be charged on machinery (not manufactured locally) by textile industrial units registered with Ministry of Textile. - Amendments in condition for textile sector
SRO 583 (1)/2017 Dated: 01 July 2017	- Amendments in Sales Tax Special Procedure Rules, 2007 relating to Retailers, Steel-Melters, Re-Rollers, and Ship Breakers. - Exemption from extra tax, levied under special procedure for payment of extra sales tax on specified goods, on supplies of lubricating oils to registered oil marketing companies.
SRO 584 (1)/2017 Dated: 01 July 2017	Various amendments in SRO 1125(I)/2011 dated 31 December 2011
SRO 585 (1)/2017 Dated: 01 July 2017	Through this SRO, FBR has exempted levy of further tax under section 3(1A) of the Sales Tax Act, 1990 on supplies to the following sectors- - Fertilizers - Supplies by steel melters, re-rollers and ship breakers operating under Chapter XI of Sales Tax Special Procedure Rules, 2007 - Supplies covered under the Fifth Schedule to the Sales Tax Act, 1990
SRO 586 (1)/2017 Dated: 01 July 2017	Amendments in Sales Tax Special Procedure (Withholding) Rules, 2007. As per SRO, no sales tax is required to be withheld on supplies made by an Active Taxpayer to another registered person except for advertisement services.
SRO 587 (1)/2017 Dated: 01 July 2017	Amendments in sales tax rates applicable on local supply of Hybrid Electric Vehicles (HEVs) falling under PCT Heading 87.03
SRO 588 (1)/2017 Dated: 01 July 2017	Through this SRO, transaction under following Islamic modes of financing have been excluded from the definition of supply under section 2(33) of the Sales Tax Act,1990 - Musawamah Bai Muajjal - Bai Salam - Istisna - Tijaraha - Istijrar
SRO 589 (1)/2017 Dated: 01 July 2017	Reduced rate of sales tax notified for services provided or rendered by marriage halls and lawn including pandal and shamiana services and caterers falling under Islamabad Capital Territory (Tax on services) Ordinance, 2001.
SRO 590 (1)/2017	Exemption from sales tax under Islamabad Capital Territory (Tax on services) Ordinance,

	SUBJECT
Dated: 01 July 2017	2001 granted on export of IT and IT-enabled services.
SRO 591 (1)/2017 Dated: 01 July 2017	SRO No. 491(I)/2015 dated 30 June 2015 issued by the FBR to fix the minimum value of taxable supply for locally produced coal at two thousand and five hundred rupees per metric ton withdrawn
SRO 592 (1)/2017 Dated: 01 July 2017	Restriction of input tax adjustment imposed on taxable supply of local produced coal exceeding five thousand rupees per metric ton.
SRO 868 (1)/2017 Dated: 31 August 2017	Various amendments in SRO 1125(I)/2011 dated 31 December 2011
SRO 1070(I)2017 Dated 23 October 2017	Various amendments in SRO 1125(I)/2011 dated 31 December 2011

SYNOPSIS OF IMPORTANT CASE LAWS

CITATION	SECTION(S)	ISSUES INVOLVED
2017 PTD 547 INLAND REVENUE APPELLATE TRIBUNAL	S.221 Income Tax Ordinance 2001	A Miscellaneous Application was filed by the Department seeking rectification under s. 221 of the ITO 2001, of an order passed by the Tribunal. The said application was dismissed by the Hon'ble Tribunal on the basis of the fact that the Department had attempted to get the Tribunal to revise and /or revisit its earlier decision under the veil of rectification. It was held that s. 221 can only be invoked to rectify an error apparent from the record. It is a mandatory condition that such mistake should be wide, apparent, manifest and patent and not something which involved serious circumstances of dispute or questions of facts or law to be established by a long drawn process and reasoning on the point to be rectified. According to the views of the Tribunal, this exercise also offended the principle of Res Judicata .
2017 PTD 558 LAHORE HIGH COURT	Ss. 18(1)(a), 122, 133, 153(1)(c), 169 and Part 1, 2nd Schedule Income Tax Ordinance 2001	Taxpayers, in tax years 2010, 2011 and 2012, deriving income from execution of construction contracts for works executed in KPK, FATA and PATA. The taxpayers were having their tax deducted at source under s. 153(1)(c) which was Final Tax. An exemption was introduced vide Finance Act 2010 through insertion of Clause 126F in Part 1 of the Second Schedule ("Clause 126F") whereby a taxpayer located in KPK, FATA and PATA would be exempt from tax for a period of three years. The taxpayers revised their returns to claim the said exemption. The taxpayers started to be issued with notices u/ section 122 whereby they were disentitled from the exemption on grounds of them falling in FTR. Numerous tax references were filed before the High Court of Lahore to answer the following questions of law: i) Can an explanatory letter issued by the FBR

		be applied retrospectively? ii) Is refund admissible on contract receipts when the appellant was not chargeable to tax under Clause 126F of the Part 1 of the Second Schedule? iii) Can an exemption certificate issued by the Commissioner be undone by an Additional Commissioner? iv) Is the payment of minimum tax under s. 113 of the ITO 2001 a statutory obligation of the taxpayer? v) Is Clause 126F applicable to FTR? Since the emphasis of the reference was on the application of the Clause 126F, the court had declined to answer question no. (iv). With reference to question no. (v), it was argued that specific exclusion under the proviso should entitle the rest of the taxpayers to the exemption regardless of whether they fall under FTR or NTR. Whereas the department had argued that the use of the words *"manufacturers and suppliers"* within the proviso was sufficient to conclude that the exemption is not intended for FTR. It was also argued that the Supreme Court has in the past has opined that the phrase *'profits and gains'* refers to business income. If this phrase is also made applicable to the FTR then the FTR shall cease to exist because people will then claim expenses against the said income. **The Hon'ble High Court agreed with the view of the Department** by placing reliance upon the contents of ss. 11, 18 and 21 of the ITO 2001. The Court also agreed with the department on the notion that if the legislature had intended to exempt the FTR taxpayers, it could have expressly done so. The court had relied on an earlier decision of the Supreme Court wherein a ratio of a US case was used to hold that there must be no doubt or ambiguity in the language upon which the claim to the exemption is founded. Even within the jurisprudence of Pakistan, ambiguities in the provision for exemption within a taxing statute was to be construed in favour of the Taxing statute since the exemption presupposes the chargeability. The remaining questions of law remain unaddressed by the Court.
2017 PTD 665 LAHORE HIGH COURT	Ss. 206 and Clause 72B, Part IV Second Schedule Income Tax Ordinance 2001	In this case, the Petitioners had routinely obtained the exemption certificates under clause 72B of Part IV of Second Schedule from the Income Tax Ordinance through which they were exempted from the charge of advance tax under s. 148 Income Tax Ordinance 2001. However, their ability to obtain the exemption certificate was limited by the introduction of additional requirements through Circular No. 8 as amended by Circular No. 12 which was issued under s. 206 of the ITO 2001 ("Impugned Circulars"). The Impugned Circulars were challenged on the ground that s. 206 does not authorize the FBR to amend law or prescribe additional conditions to a clause in the Second Schedule. This defect was identified by the FBR itself. Subsequently, clause 72B had been amended through Finance Act 2014, to include a proviso whereby the power to impose conditions for issuance of an exemption certificate under clause 72B was inserted. Accordingly, SRO 717/2014 was issued and conditions which were similar to the conditions present in the Impugned Circulars were imposed through this Impugned Notification. However, the main issue was whether the conditions introduced through subordinate legislation is beyond or against the provision of clause 72B of the ITO 2001. The Court placed reliance on one of the principles from the Interpretation of Statutes which emphasized that **if the subordinate legislation of a regulator is in excess of the provision of the statute** or is in conflict with substantive

		provision of the parent law, then such subordinate legislation **must** be regarded as ultra vires of the substantive provision and statute. It was also emphasized that it is settled law that taxing provisions such as 72B is to be construed strictly and what cannot be done directly cannot be allowed to be done indirectly through a circular. Resultantly, the Court had decided in favour of the Petitioners. Further, it was also held that the power of FBR under s. 206 ITO 2001is only to provide guidance and to interpret the provision of the Ordinance. There is no power available with the FBR to legislate or introduce conditions in substantive provisions of the Ordinance. The same was the case with s. 53, it also did not confer jurisdiction on the FBR to introduce changes in the law. Side Note: this judgment was not clear whether the SRO which was passed following the insertion of proviso through Finance Act 2014 was ultra vires or not. However, it was noted that the Impugned Notification had already been challenged in another Writ Petition whereby it had been held that the empowering of the FBR to introduce conditions for issuing an exemption **does not mean that FBR can introduce requirements** which would in effect do away with the exemption itself. If that was the intent of the legislature, it would have expressly mentioned it in the statute. It is pertinent to mention here that the Court did not illustrate how the requirements introduced through the Impugned Notification was doing away with the exemption, in light of the facts of the petitions.
2017 PTD 686 LAHORE HIGH COURT	S. 214C and s. 117 of the Income Tax Ordinance 2001 s. 72B and s. 50 of the Sales Tax Act 1990 s. 42B of the Federal Excise Act 2005	Various Petitions were filed before the LHC to challenge the audit policy of 2015 through which Random Ballot was conducted by the Board. It was argued that the Impugned selection for audit is made by ignoring the judgment of LHC reported as 2015 PTD 2538 whereby FBR was asked to structure its discretionary powers under s. 214C. Hence, the petitioners claimed that the impugned selection without framing the rules is illegal. (Side Note: during the proceeding of the case, the FBR had framed "Rules for Selection and Conduct of Audit".) It was also argued that without framing the rules for the selection of Audit, the FBR could not proceed for the selection of the Audit. This challenge was countered by the respondents that non framing of the rules does not render the provisions of the statute as unworkable. This prompted the Court to discuss the phenomenon of "self executing provisions within a statute". Here reliance was placed on various judgments of the Supreme Court and the Interpretation of Statutes to, in a nutshell, explain that a provision is self executing if manifest intention is found in language of the provision that power conferred should go into immediate effect. A provision is not self executing if it indicates merely a line of policy or principles, without giving means by which such policy or principles are to be carried into effect. The LHC was appreciative of the fact that the provisions in the federal taxing statutes were self executing because they did not manifest an intention for further/subordinate legislation to carry out the selection. Further, the provisions allowed the Board to conduct a random ballot. Nevertheless, this did not stop the LHC to hold that the discretionary powers, even under a self executing provision needs to be structured to ensure a fair and transparent exercise of the discretionary powers. Numerous judgments of the Supreme Court as well as the LHC case (supra) was referred to hold that if the exercise of discretionary powers appears arbitrary and capricious, the Court would intervene.

		Hence, the Court went on to consider whether the selection in question was made after structuring discretion through Audit Policy 2015. Reliance was placed on the facts that FBR had been unable to raise its capacity to conduct audit, at various instances the record was being called after a delay of more than one year and if a taxpayer would be willing to pay a percentage increase in the payment of his taxes, the audit proceedings would be dropped. This was held to be against the purpose for which the provisions for audit had been places in the taxing statutes. Further, different parts of the Tax Policy 2015 were read to show manifest intention of the FBR to raise demands to meet the budgetary targets. Other deficiencies in the impugned policy include no time frame was given for the conduction of the audit. It was found that the policy speaks about sector studies to determine risk factors and bench marks but no such report has ever been published by the FBR. The Court went on to emphasize on the production of the Audit Report before allowing another adjudicating officer to conduct inquisitorial proceedings to penalize the defaulting officer in light of the findings in the audit report. In the backdrops of these facts, the Court considered it necessary to organize, regulate and produce a framework for the conduction of the audit. It was emphasized that the procedure and manner to be adopted for the conduction of the audit should be simple and predictable to ensure the fairness of the exercise. The Court was particularly critical of the fact that the Audit proceedings are almost never completed on time. Hence, the FBR was directed to complete pending audits selected under the Impugned policy latest till the 30th of June 2017 and in case of failure, the selection for audit shall be deemed to have been dropped. It was ordered that FBR shall rectify the defects pointed out in the Impugned Policy and in the policies to be issued in the future. It was held that the following directions shall be read and incorporated in the rules or policies: i) A taxpayer selected and audited in the preceding tax year shall not be selected for audit in the following year unless specific reasons are given to justify the said selection. ii) Audit shall be completed on the issuance of the Audit Report. If audit is not completed within a given time frame, the selection shall be deemed to have been dropped. Upon the issuance of the Audit Report, adjudication proceedings shall be carried out by some other tax officer. iii) The practice of dropping audit cases upon the agreement to pay an increased sum is to be discouraged. iv) The audit shall be conducted in accordance with “Income Tax Manual Part V” and “Sales Tax Audit Hand Book” and such procedure for conduct of audit shall be incorporated in the Rules for the Selection and Conduct of Audit. v) Remedy against the grievances regarding selection or conduction of audit shall be read as part of every Audit Policy and its procedure is directed to be incorporated in the Rules for Selection and Conduct of Audit. The Court also decreed that the decision, directions and observations made in this judgment shall be followed while implementing the impugned Audit Policy 2015 and future Audit policies.

2017 PTD 83 LAHORE HIGH COURT	Income Support Levy Act 2013	In this case, a Writ Petition was filed against the imposition of the Income Support Levy whereby it was challenged on the basis of three principal grounds. The grounds were as follows: i) The levy is imposed on the net value of the assets and not on the capital value of the assets. This fact, according to the petitioners, takes the Income Support Levy Act 2013 beyond the mandate of Art. 50 of the Constitution and therefore being a matter which is beyond the competence of the Parliament to legislate upon; ii) The levy is aimed at raising funds for a particular purpose as opposed to serve as a measure for earning the revenue for the state. Hence it is a fee and is not a tax. Therefore the said levy was incapable of being passed as a money bill. iii) It was discriminatory because of the fact that it is only applicable on the people who file their wealth statements. All of the above three grounds were rejected by the Court. By placing reliance on the judgment of the Supreme Court in the case of *Haji Muhammad Shafi v Wealth Tax Officer*; the Hon'ble Court held that the fact that the exercise of calculating the charge of levy on the value of the assets has provided a means of calculating the tax on the capital value of the assets, which is permitted by Art. 50 of the Constitution. The Court was of the opinion that the capital value of the assets includes the net value of the assets. The *Elahi Cotton* case was also referred to hold that the each entry in the Federal Legislative List should be interpreted broadly to make it encompass a large category of things. With regards to the second ground, the Hon'ble Court while acknowledging that the Preamble of the Act prescribed that the levy was to support the economically distressed and to promote the social and economic well being of the people and to provide them with basic necessities; was not satisfied that these words in the Preamble are not enough to hold that the said levy is a fee and not a tax. Although the case of *Durrani Ceramics* which dealt with the imposition of Gas and Infrastructure Development Cess was considered by the Court but it was distinguished on the basis of the fact that the specific purpose element in the determination of a levy as a fee was laid down in the substantive provision (i.e. s. 4) of the GIDC Act and as such it could then be considered as a fee and not as a tax. The Court seemed largely swayed by the maxim of favoring the interpretation which saves the law as opposed to the one that destroys it. It was held that for a levy to be a fee, the relation between the purpose and the persons on whom the levy is being exacted has to be established. The third ground was rejected for the reason that the fact that the levy is applicable only on people who are required to file their wealth statements which effectively meant people earning more than PKR 1 million were required to file the said return. Hence, the Court found a class on whom the levy became applicable. Since there was no discrimination within the class, it was held that there was an intelligible differentia which allows a classification on whom the levy is to be imposed. In light of the above, the petition was dismissed.
2017 PTD 150 ISLAMABAD HIGH COURT	s. 11(1)(b), 52 and 86 of the Income Tax Ordinance 2001.	That as per the provisions of s. 50(3) of the Repealed Income Tax Ordinance 1979; it was alleged that the interest paid by the taxpayer to non-resident banks was the income which accrued in Pakistan and the taxpayers were required to deduct tax on source under the Pakistani law.

		For its failure to deduct tax, the taxpayer was issued with a Show Cause notice under s. 161(1A) read with s. 205 of the Income Tax Ordinance 2001. Subsequently an order was passed and tax was charged on account of non deduction of tax from interest payments made to the non-resident banks along with the default surcharge under s. 205. However, the reference was answered in favour of the taxpayer on the grounds that the first obligation of the assessing officer was to establish that whether the amounts of the interests paid by the taxpayers to the non- resident banks were taxable in Pakistan before the initiation of any action of default within the domain of s. 50(3) of the Income Tax Ordinance 1979, which he failed to establish. By operation of Article 7 of the Treaty between Pakistan and Italy (the country to whom the non-resident banks belonged); s. 11(1)(b) is specifically exempt. When the assessing officer lacked the authority to charge advance tax; the collection of the same could not arise. It was held by the Hon'ble Court that an action under s. 161 can only be taken against a taxpayer if it is established that the payments made to non-resident bank is chargeable to tax in Pakistan.
2017 PTD 237 SINDH HIGH COURT	s. 113, 74(1) & 2(68) of the Income Tax Ordinance 2001	A reference was filed before the High Court to decide upon the two matters: 1) whether the respondent was required to pay minimum tax under s. 113 of the Income Tax Ordinance 2001; and 2) whether a certain amount that was reimbursed to the taxpayer was to be determined as "Income from Business" or as "Income from Other Sources". The first question was answered in favour of the taxpayer simply because the relevant provisions were omitted via Finance Act 2008 before being subsequently reinserted by Finance Act 2009. Hence, the tax could not be levied on the respondent. With regards to the second question, the Hon'ble Court provided that for determining whether a particular receipt is capable of being considered as an "Income from Business", the underlying nature of transaction will have to be reviewed. In the circumstance, the taxpayer was an electric power generation company, where the reimbursement of the money was a standard business practice.
2017 PTD (Trib.) 481 CUSTOMS APPELLATE TRIBUNAL	s. 148 of the Income Tax Ordinance 2001	Upon the discovery that during the scrutiny of the import data pertaining to concessionary rate of 3%, the Income Tax admissible on material vide clause 9A of the Second Schedule Part II of the Income Tax Ordinance 2001to the industrial undertaking for their own use, it was observed that the appellants imported various consignments of components/parts and finished articles on concessionary rate. By relying upon codal formalities, the matter was referred to Collector Customs Adjudication-II, Karachi who proceeded to impose the income tax under the aforementioned sections. This ability of the Customs Authority to take cognizance and adjudicate upon matters relating to Income Tax was challenged on the grounds that as per the terms of s. 148 of the Income Tax Ordinance 2001, the Collector of Customs only has authority to collect income tax at the time of import. Thereafter, shot payment of Income Tax can only be alleged by the Commissioner for Income Tax. It was alleged that it could, at best make a reference to the income tax department. The DR, on the other hand relied on a notification passed in between the

		departments to allow the Collector to adjudicate on the matter. However, recognizing that each of the relevant taxing statute provide for their own method of recovering short levied taxes; it was held that the Departments cannot make a rule which is inconsistent with the Parent statute. Hence the arguments advanced by the AR were accepted and the impugned orders passed by the Collector of Customs were set aside.
2017 PTD 844 LAHORE HIGH COURT	ss. 30, 136 & Second Schedule of the Income Tax Ordinance 2001	The Department had disputed an order of the ITAT which allowed the appeal of the taxpayer on the ground that the assessee's income from interest is exempted from tax and the levy of the WWF imposed by the assessing officer is not sustainable. In this regard the Court agreed with the ITAT that the interest income is to be considered as the business income of the taxpayer as the same is earned by the Respondent in question on security deposits held with Askari Bank for obtaining Bank Guarantee as part of assessee's business income and is exempt from tax under clause 176 of the Second Schedule to the Ordinance. Hence, the income would not attract a levy of WWF. Citing the judgment of the Supreme Court in the case of Lucky Cement Limited v Commissioner Income Tax, a receipt will only be considered as an "Income from Other Source" where the investment of money by an assessee has not been made as part of its business activities. However, if the profit is generated from the money invested in its business, as was the case here, the receipt will be considered income from Business.
2017 PTD 864 SINDH HIGH COURT	ss. 32(2), 34, 122(5A) & 133 of the Income Tax Ordinance 2001	A reference was filed by the taxpayer which was an insurance company, to decide whether the Tax Officer was justified in disallowing the Incurred but not reported claims ("IBNR claims") in accordance with the provisions of the Fourth Schedule of the Income Tax Ordinance 2001. The Department had disallowed the expense on the grounds that the tax payer has not actually incurred the said expenses. Rather they are a product of the mathematical calculations. The taxpayer argued that the accounts have been created in accordance with the insurance laws of Pakistan and the associated rules allow the taxpayer to make such provisions in their accounts. The Courts by relying on various judgments from the Australian courts reached the decision that it's a certainty that an insurer would suffer claims and as such was entitled to claim a deduction for future events which are likely to occur and would require indemnification to the policy holders. The fact that no notice has been received of a claim was irrelevant.
2017 PTD 1113 SINDH HIGH COURT	ss. 28(1)(a) and 133 of the Income Tax Ordinance 2001	The taxpayer had advanced interest free loans to the employees for the purchase of motorcycles which naturally were treated as an expense by the taxpayer. The CIR(A) and the ATIT agreed with the taxpayer regarding its election to treat this expenditure as an expense and had held the same to be treated as a profit on debt for business and that the Tax Officer was not justified in disallowing this expense. The applicant, who was the department, in this case disagreed with the findings of the CIR(A) and the ITAT. Hence, proceeded to file a reference before the High Court. A tax reference was filed for the court to decide on the question of whether the tax officer was justified to make the deletion of the aforementioned expense in terms of section 28(1)(a) of the Income Tax Ordinance 2001.

		The major controversy was whether the expense incurred by the Taxpayer was capable of being a business expense or not. The High Court affirmed the findings of the ITAT whereby it agreed with the taxpayer that the loan given to the employees were indeed in pursuance of the taxpayer's business. At the previous stage an unreported decision *Hong Kong Shingai Bank* on which the Department was placing heavy reliance was distinguished on the basis that the loans made by the Bank to its employees were for their own personal use as opposed to for the purposes of furthering the business of the taxpayer. Here the loans for motorcycle were advanced on the grounds to ensure that the employees' punctuality is not compromised due to the faulty state of the public transport.
2017 PTD 1119 LAHORE HIGH COURT	ss. 127, 128(1A) and 131 of the Income Tax Ordinance 2001	During the pendency of an appeal, the taxpayer had petitioned to the High Court to restrain the department from initiating recovery proceedings and unfreeze the bank accounts of the taxpayer till the finalization of the appeal. However, the taxpayer had filed the aforementioned petition simultaneously with the filing of the appeal with an application for stay before the first appellate forum i.e. the Commissioner (Appeals). The said application was yet to be rejected by the Commissioner (appeals). The LHC also held that as per Article 199 of the Constitution of Pakistan 1973 which provides that where the making of an interim order would have the effect of prejudicing or interfering with the carrying out of the public work or of impeding the assessment or collection of public revenues, the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and that he has had an opportunity to be heard and the Court is satisfied that the interim order would not have such affect as aforesaid. Furthermore, the Court also opined that the constitutional jurisdiction of a court can only be invoked if there is no other remedy available to an aggrieved person. In this case, he clearly had a remedy under the relevant law. Hence, the Hon'ble Court was pleased to dismiss the aforementioned petition on the grounds of being meritless and without any substance.
2017 PTD (Trib.) 1126 INLAND REVENUE APPELLATE TRIBUNAL	s. 131 of the Income Tax Ordinance 2001	An application was submitted before the Commissioner (Appeals) to grant interim orders against the AR's apprehensions that the tax authorities were likely to recover the huge demand through coercive means. The Tribunal held that the stay of the recovery demand by this tribunal can only be granted where it is proved that the taxpayer will face hardships or financial constraints if a stay is not granted to them. Interestingly, the Tribunal did not agree with the AR's contention that the taxpayer will face severe liquidity problems if the amount is recovered from them before the disposal of the original Appeal. This factor, according to the learned tribunal was incapable of satisfying the criteria of causing irreparable loss which is the pre-requisite for the grant of interim orders under s. 131(5) of the Income Tax Ordinance 2001. In the circumstances, the application of the taxpayer was rejected.
2017 PTD 864 SINDH HIGH COURT	s.18(1)(d) and s. 133(1) of the Income Tax Ordinance 2001	A Tax reference was filed by the Department to allege that the interest free loans given to the taxpayer company by its directors is to be considered as income from business under s. 18(1)(d) of the Income Tax Ordinance 2001 in light of the explanation provided therein.

		The Sindh High Court disagreed with the contentions of the Applicant and affirmed the findings of the ATIT which was based on the grounds that to allege that the taxpayer has earned an income under s. 18(1)(d), the department will have to proof that the receipt had the following three ingredients: 1) There should be an accrual of benefit on the recipient; 2) the benefit was accrued at a fair market value; and 3) there must be a business relation. The third ingredient, in the opinion of the honourable ATIT, was the most crucial. The tribunal defined business as "something real, substantial and systematic activity with a set of purpose. Business relations normally mean a trade relationship of buying and selling of commodities/goods/import/export, use of trademark/franchise etc." The Hon'ble Tribunal concluded that the applicant department has failed to establish this relationship. The Hon'ble Tribunal relied on an earlier decision of the Supreme Court in the case of *CIT v Smith Kline and French of Pakistan Ltd (1991 SCMR 2374)* where it was held that to treat a receipt as income it is necessary to find that the activity is covered by the word "income" as defined in the income tax law. It was found by the Tribunal that in all the cases in which a receipt is sought to be taxed as an income, the burden lies upon the Department to prove that it is within the taxing provisions. The Department, in tribunal's opinion, failed to establish this fact and in this regard, the fair market value of the benefit is not an income. In the circumstance, the Honourable High Court was pleased to dismiss the aforementioned reference.
2017 PTD (Trib.) 867 INLAND REVENUE APPELLATE TRIBUNAL	ss. 201, 205 and 221 of the Income Tax Ordinance 2001	This appeal that was filed before the Income Tax Appellate Tribunal addressed the controversy of whether the default surcharge is capable of being paid in the absence of willful default. Relying on the technique of literal interpretation and the words of the statutory provisions which provided that "shall be liable to pay default surcharge"; the Tribunal held that the provision did not allow room for establishment of mens rea. The Tribunal was of the opinion that the AR is confusing penalty for willful default with additional tax. According to the Tribunal by relying on an earlier decision of the Tribunal which is reported as *2010 PTD (Trib.) 1081*, the default surcharge was an additional tax and not a penalty.
2017 PTD 876 SINDH HIGH COURT	s. 53, 133 read with Clause 110 of Part 1 of the Second Schedule of the Income Tax Ordinance 2001	A reference was filed before the High Court to primarily decide on the issue whether the return of a Term Finance Certificate is exempt from tax under the provisions of Claus 110 of Part I of 2nd Schedule to the Income Tax Ordinance 2001 ("Exemption Clause"). As per the DR, the Term Finance Certificates have not been expressly provided for in the Exemption Clause. Whereas the AR emphasized that the Exemption Clause provides an exemption for income derived as capital gains from the sale of redeemable capital and the Companies Ordinance 1984 provides that the redeemable capital includes Term Finance Certificates. The Hon'ble Court agreed with the contentions of the AR and as such was pleased to answer the reference in the favour of the taxpayer.
2017 PTD (Trib.) 891 INLAND REVENUE	s. 20(1) of the Income Tax Ordinance 2001	For TYs 2003, 2004 and 2005; the taxpayer had at first filed its return declaring income in the region of multiple millions. Nevertheless, these returns were subsequently revised and the taxpayer had declared a loss in the said tax years. Theses returns were selected for Audit under s. 177(4) of the Ordinance

APPELLATE TRIBUNAL		whereas the return for 2004 after being audited under s. 177(4) was still at a loss; the same was made liable to be reassessed under s. 122(4) and 122(5). As a result of this exercise, the assessment of the taxpayer came in the region of Rs. 46 million, 72 million and 54 million for Tax Years 2003, 2004 and 2005. The amount so reassessed was by virtue of adding back the expense attributable to amortization. Upon the preference of an appeal, the said amount was deleted by the Commissioner Inland Revenue (Appeals) ("CIR (A)"). However, it was also directed by the CIR (A) that the taxation officer should work out the correct amount as it may be less or it may be more. However on account of addition under the head indirect expenses, the case was remanded back to the taxation officer with certain directions; whereas the addition on account of marketing expenses was confirmed. Feeling aggrieved by these directions, the taxpayer preferred an appeal before the Income Tax Appellate Tribunal. The common issue that was agitated by the taxpayer in the appeals relating to the aforementioned tax year was that the power could not be delegated to DC (IR) to determine whether a case should be selected for Audit under the provisions of s. 177(4) of the Ordinance. This agitation was dismissed by the Tribunal at the outset in light of sections 211, 210 and some earlier passed decisions of the Tribunal. Regarding the issue related to the remanding of case back to the tax officer; the Tribunal believed that whilst it is not allowed under s. 129(1) of the Ordinance but the absence of record and evidence disables the ATIT to render it otherwise. Finally the controversy remained that whether the Taxpayer was entitled to claim amortization on unimproved land which had been subsequently built upon and thereafter had been sold and the Tribunal held that the said asset is inapplicable to the rules of amortization as envisaged under the law. However, the Tribunal had also opined the taxpayer could have used its right to deduct the cost of acquisition. For the factors mentioned above, the amended assessment of the taxpayer by the AC(IR) was affirmed.
2017 PTD 903 SINDH HIGH COURT	s. 132, 133 and 221 of the Income Tax Ordinance 2001	The taxpayer filed a return under s. 114 of the Income Tax Ordinance 2001 declaring an income of Rs. 305,099,479/- in TY 2013. This assessment was subsequently amended under s. 122(1) of the ITO 2001 vide order 18 March 2006. Thereafter, on 04 April 2009; the taxpayer was issued with a show cause notice under s. 221 of the ITO 2001 whereby it was alleged that the exemption claimed by the Taxpayer from income on receipt of export services under clause 131(b) of Part I of the Second Schedule of ITO 2001 is liable to tax at the rate of 1% on the services rendered outside Pakistan under clause 3 of Part II of the Second Schedule. According to the DCIR who issued the notice, since the said receipt was not charged to tax @ 1%, a mistake was apparent on record. Finding the reply of the Taxpayer filed through the AR to be unsatisfactory, the DCIR had passed an Order under s. 221 of the Income Tax Ordinance 2001 whereby 1% tax was charged by person on receipt for services rendered outside Pakistan. Thereby an amount of Rs. 248,710/- was raised by the DCIR. Thereafter an appeal was filed by the Taxpayer before Commissioner (Appeals) who annulled the order passed by the DCIR by observing that the order of the DCIR falls outside the ambit of s. 221 of the ITO 2001 by placing reliance upon the decision given by the Supreme Court which is reported as 2008 PTD 253. Being aggrieved by the findings of the Commissioner

		(Appeals), the Department filed an appeal before the Tribunal who came to the same conclusion. Thereafter, the department had filed this appeal. Hence, the controversy surrounding this Reference was whether the mistake was apparent on record or not. The Taxpayer had argued that it is a settled principle of law that while rectifying any mistake apparent from record, the same should not be a debatable or a moot point. After listening to the arguments of the Parties, the High Court reached the conclusion that the powers of DCIR under s. 221 of ITO 2001 are limited to the extent of mistakes apparent from record since there are other provisions of law which deal with the authority of department officials with regard to the reopening of assessment and revision etc where the department is of the opinion that some of the income has escaped assessment. For this reason, the reference was answered in favour of the Taxpayer.
2017 PTD 1181 ISLAMABAD HIGH COURT	Interpretation of Statute & s. 2(29C)(a)(i) to (iv), 133 and 148 of the Income Tax Ordinance 2001	A number of tax references filed by the Department and the Taxpayers dealt with a common question of law which related to the interpretation of s. 148(7) and s. 2(29C) of the Income Tax Ordinance 2001. The brief facts of this case are that the taxpayers are engaged in the rendering of telecommunication services through telecommunication systems. In order to render the telecommunication services, the Taxpayers use various machines, equipments and materials. The Taxpayers from time to time import various articles and the advance income tax paid thereon would thereafter be adjusted in their returns. This adjustment was challenged by the assessing officers on the ground that the Taxpayers are not "industrial undertakings" in terms of the definition provided under s.148 (7) of the Income Tax Ordinance 2001. Therefore the advance income tax paid by the Taxpayers was not admissible. In this regard, a notice under s. 221 of the Ordinance was issued by the assessing officer and thereafter, an assessment order for the respective tax year was passed under s. 122 of the Ordinance. The controversy was whether a telecommunication company providing and rendering telecommunication services is capable of being an industrial undertaking when the same have been declared to be an industry vide the Mobile Cellular Policy of 2004. In the first category of cases, a notice under s. 221 of the Ordinance was issued by the assessing officer and thereafter, an assessment order for the respective tax year was passed under s. 122(1) of the Ordinance. The taxpayer had filed an appeal which was subsequently allowed by the Commissioners (Appeal) by observing that the notices under s. 221 and 122(1) of the Ordinance were ultravires. Moreover, it was further held that the Taxpayer was entitled to adjust the income tax paid at the import stage. Thereafter an appeal was before the Tribunal which also dismissed the appeal by affirming the findings of the CIR(A). Following this, the Department had filed this reference to address the aforementioned controversy. The second category of cases involved issuance of show cause notice under s. 122(9) of the Ordinance 2001 which stated that telecommunications sector was not to be considered as an "industrial undertaking" for the purpose of s. 148(7) on the sole ground that the FBR had issued a letter declaring that the telecommunication sector to not be considered as an "industrial undertaking". The Assessing Officer, vide its respective order decided against the Taxpayer and therefore, the latter filed appeals before the CIR(A) but the same did not succeed. The CIR(A) had held that the letter issued by the FBR is binding on the officers of the FBR. The learned CIR(A) therefore dismissed the appeals

		and held that the advance income tax paid by the taxpayer at import stage was final discharge of tax. The taxpayer preferred appeals and the same were subsequently dismissed by the learned Tribunal. Hence, a reference was filed by the Taxpayer to address the aforementioned controversy. In the third category of cases, the Assessing Officer issued show cause notices under s. 122(9) of the Income Tax Ordinance 2001 on the sole ground that since the FBR had declared that telecommunication companies are not covered under the definition of 'industrial undertaking', the Taxpayer was not entitled to adjustment of advance tax paid at import stage. The show cause notice was decided against the taxpayer for which the Taxpayer preferred an appeal before the CIR(A). This appeal was dismissed on the sole ground that the Taxpayer was not an industrial undertaking since it had not been successful in declaring itself as such despite making several attempts. It was therefore held that the taxpayer is a service company and did not fall within the definition of an industrial undertaking. In this regard, an appeal was preferred by the Taxpayer before the Appellate Tribunal. This appeal was dismissed and the learned tribunal had held that in order to be treated as an industrial undertaking, the entity claiming the exemption should be simultaneously engaged in all the trades mentioned in sub-clauses (i) to (iv) of clause (a) of section 2(29C). The learned counsel for the petitioners in all the aforementioned categories, have argued that the goods imported by them in the instant references are not sold in the market to generate income; the goods imported are used for the purposes of subjecting materials to various processes that are ancillary to the services that are ultimately provided by the Taxpayers. The goods imported by the assessee are exclusively for self use in the course of business and not resale, and hence tax will be separately charged on the income which is generated by the use of that machine. Reliance was placed on the *Elahi Cotton Mills* case (1997 PLD SC 582) in support of the contention that a presumptive tax can only be imposed on items when it is regarded as citizens' income; if no income is being derived from the import, there can be no question of final tax and any advance payment shall always remain adjustable. It was argued that it is settled law that what cannot in any rational sense be argued as income cannot conceivably be taxed as income. It was also argued that the quantum of presumptive income can only be fixed on the basis that the importer is going to earn direct income from the imports. The final tax regime was introduced purely to capture the untaxed income of commercial importers who were in the business of reselling imported goods. Whereas the learned counsel for the Departments have argued that the FBR vide their letters have unambiguously declared that telecommunication services to their client are not covered under the definition of industrial undertaking; the said letter was not challenged by the counsels representing the Taxpayers. Hence, based on the aforementioned Honorable High Court was pleased to frame the following questions of law to have arisen from the Impugned Judgments of the learned Tribunal: 1) Whether the letter issued by the FBR, declaring that the entities engaged in the provision of telecommunication services as not covered under the definition of s. 2(29C) is final and binding on the adjudicating forums; 2) When does a taxpayer become entitled to adjustment of advance tax paid under s.148 of the Income Tax Ordinance 2001; and 3) Whether the adjudication forums in the case of the instant references have averted to the relevant factual considerations in the context of s.

		148 read with s. 2(29C) of the Income Tax Ordinance 2001. According to the Honourable High Court, the Tribunal had reached an absurd interpretation by not treating all the clauses of s. 2(29C) as distinct and separate. By holding that an undertaking should comply with all the clauses to be considered as an "industrial undertaking" would, according to the High Court, would in effect disentitle all undertakings from being considered as an "industrial undertaking". Such interpretation would give rise to an absurdity which obviously cannot be attributed to the legislature. Moreover, this interpretation also renders clause (i) as redundant and it is settled law that redundancy can also not be attributed to the legislature. It was important for the Taxpayers to be considered as an industrial undertaking because as per s. 148(7) of the Income Tax Ordinance 2001; advance tax on imports shall not be collected on the items imported by an industrial undertaking for its own use. For the taxpayer to be considered as an industrial undertaking, it is necessary to satisfy the elements of the definition provided in s. 2 (29C) of the Income Tax Ordinance 2001. It was also said that it is a settled principle of interpretation that the provision must be given its true meaning by constructing them together in a harmonious manner. By applying these principles while reading the s. 2(29C) would ultimately lead to the conclusion that if an undertaking satisfies any of the sub clauses within s. 2(29C); it would be held to be an industrial undertaking. According to the learned High Court, a plain reading of clause (i) of s. 2(29C) of the Income Tax Ordinance 2001 shows that it has two distinct parts. Firstly, manufacture of goods and materials and secondly, subjection of goods and materials to any process which substantially changes their original condition. In its wisdom the legislature had used language which clearly draws a distinction between these two parts and inevitably have to be read disjunctively. This distinction is crucial for determining the legislative intent. Though they appear to be similar but the language of the latter part has a much wider meaning and extends to eventualities beyond the conventional manufacture of goods and materials. These two phrases cannot be treated as having the same meaning and covering similar situations otherwise the words used would become redundant and superfluous. As already noted, redundancy cannot be imputed to the legislature. The phrase 'engaged in subjection of goods or materials to any process which substantially changes their original conditions is, therefore, to be interpreted by distinguishing it from manufacture of goods or materials. The High Court felt that it would be safe to conclude that the legislature has intended to cover a wide range of eventualities and not merely manufacturing of goods and materials by using the conventional methods. The difference in the usage of the terminologies of "materials" and "goods". By placing reliance on the dictionary meaning of the term "materials"; the High Court was of the opinion that the word also included to mean information and data. Data processing through various machines, equipments and other modes would also be covered within the meaning of 'subjection of goods and materials to any process'. Regardless, the High Court held that the classification of the telecom sector as an industry vide the notification of the Federal Government for the Mobile Cellular Policy of 2001 should have been considered by the Tribunal when deciding on the factual controversy of whether the same can be determined as industry or not. Additionally, it was also held that in Category B and C cases, the reliance on the letter issued by the FBR was also misplaced as the same was a result of a response to a query raised by certain Chartered Accountants and was addressed to them only. Further, it was evident that the FBR had

		formed an opinion on the basis of an assumption that the telecommunication companies are merely providing services. No inquiry had been undertaken by the Federal Board of Revenue for the purpose of ascertaining whether the providers of telecommunication services, use and process wherein goods and materials are substantially changed from their original condition. The tribunal, according to the learned High Court was not justified in holding that the letter of the FBR was binding on the officers of the Department. Evidently, the Category A cases also did not attempt to iron out the factual controversies regarding whether the goods imported by the Taxpayers are being used for their own use or not. Failure to address the factual controversies in all the above category of cases resulted in the orders of the Tribunal being arbitrary, perverse and fanciful. It was also held that it is settled law *that failure to advert to a question raised before the Tribunal itself is a question of law* and therefore the High Court is capable of addressing it in a Tax Reference filed before it. The cases therefore, were remanded back to the Tribunal with a direction to advert to the factual aspects of each case separately by having regard to the principles enunciated above.
2017 PTD 1069 SINDH HIGH COURT	s. 37A of the Income Tax Ordinance 2001 as amended by Finance Acts of 2014 and 2015	The petitioners, aggrieved by the changes brought to s. 37A and the relevant divisions of the First Schedule by Finance Acts of 2014 and 2015; filed a petition to challenge the said changes. The facts of the present case are that after the advent of FA 2014, the petitioner had disposed some of its shares and was brought to tax in terms of the rate as applicable by FA 2014. The petitioner disputed this liability by adopting the position that it is a vested right of the taxpayer that the rate as it stood on the date of acquisition of securities would be applicable. This line of argument was rejected by the High Court. However, the court opined that the question of rights do arise on the wording of s. 37A of the Income Tax Ordinance 2001. According to the reasoning of the Honourable High Court, the section before the amendment by the Finance Act of 2014 provided the right that if the shares were held for more than a year, it would be exempt from tax under this section. In particular, the omission of the proviso could not affect the rights that had become vested in a taxpayer in respect of shares that has been held for more than one year. This became especially relevant in light of the fact that the omission did not even purport to be retrospective. Hence, since the omission took effect from 01.07.2014, this meant that it was a vested right that the section 37A would not apply in respect of any shares held for more than a year as on or before 30.06.2014. Any capital gains made on such shares, even if the disposal took place on or after 01.07.2014, could not therefore be brought to tax. The petitions were thereafter decided in favour of the taxpayer.
2017 PTD 1585 SINDH HIGH COURT	ss. 24, 97 and 122(5A) of the Income Tax Ordinance 2001	A petition and a tax reference was filed by the taxpayer seeking to amortize and hence expense certain goodwill that it claimed to have acquired. It was believed that the decision of either case would bring about the same outcome and hence, the hearings for the two cases were conducted simultaneously. Citing the case of *Dr. M.B. Ankalsaria v Commissioner of Wealth Tax Karachi (1992 SCMR 1755)*, the petitioner had argued that the goodwill of a business is an intangible within the meaning of s. 24(11) and therefore, amortization should be allowed.

		Whereas the counsel for the respondent department in the Constitution Petition, submitted that the goodwill being claimed by the petitioner did not fall within the definition provided in s. 24 as it could not be considered within the word "like property" that was provided in s. 24(11) of the Income Tax Ordinance 2001. According to him, the petitioner was merely attempting to put a value on the physical assets and unjustly claim it as amortization. The counsel for the Respondent argued that goodwill was something that had to be generated or created by the taxpayer or some person for whom the taxpayer acquired it, and nothing of the sort had happened in the present case. However, the Respondents in the Tax Reference had argued that in reality good will was an indeterminate number, which could be settled at whatever value which was suited to the buyer and seller. It was contended that good will is nothing but an artificial construct. Resultantly, the following questions of law had arisen from the decision of the learned Tribunal: 1) Is goodwill an "intangible" within the meaning of the definition given in section 24(11) of the Income Tax Ordinance 2001? 2) Whether the petitioner had acquired any goodwill within the meaning of s. 24? 3) Whether the petitioner is entitled to amortize and expense any goodwill in terms of s. 24? Relying upon the Ankalsaria case (*supra*) and the authorities cited therein, the SHC was pleased to answer the first question in favour of the taxpayer. By virtue of the fact that the taxpayer had acquired the business as a whole, inclusive of its liabilities and assets, it necessarily followed that the petitioner had also obtained the goodwill of the business. Hence the second question was also answered in the affirmative. This was based on the premise that the goodwill is an intrinsic part of the business and therefore, it cannot be separated when the business as a whole was being transferred from the seller to the buyer. The SHC was unimpressed by the requirement of the State Bank that the petitioner upon purchasing the target banking company will be required to reapply for the license. Since s. 24 requires that the intangible is to be used in the furtherance of the business, the fact that the business was continued subsequent to the purchase, the SHC formulated the opinion that the intangible in question was being used for the business. Hence, the third question was also answered in favour of the taxpayer.
2017 PTD 1852 SINDH HIGH COURT	ss. 121, 124(4), 129, 132, 137(2) of the Income Tax Ordinance 2001 read with Ss. 39, 42 and 54 of the Specific Relief Act 1877	A suit was filed by the Plaintiff to challenge the show cause notice issued by the Defendant Department under s. 122(5A)(4) of the Income Tax Ordinance 2001. Resultantly an interim stay was granted by the Hon'ble High Court to restrain the defendants from taking any coercive action against the Plaintiff. The interim order had also directed the CIR (Appeals) to decide the appeal on/or before 25 June 2015 which was accordingly decided on 26 June 2015 and an order was duly served to the Plaintiff on 29 June 2015. In terms of such an order, a number of demands had been raised by the adjudicating officer under different heads were deleted whereas some were maintained and the others were subject to rectification. Therefore, an application for refund of the amount recovered from the Plaintiff under impugned demands along with applications bearing CMA No. 9821 of 2015 seeking orders to restrain the defendants from taking any steps towards recovery of the impugned demand in pursuance of

		order passed by CIR(A) had also been filed. On 01st July 2015, application in hand was considered and the Plaintiff obtained an order on the strength that without giving effect to section 124(4) and 137(2) of the Income Tax Ordinance 2001; the recovery was made under coercion. No appeal effect order was passed and 15 days notice was also not given to the Plaintiff under s. 137 of the Ordinance 2001. Hence, the issue that was to be settled by the Court was: can recovery proceedings be initiated before the passing of the appeal effect order. The court held as follows: where direct relief is provided in an order under s. 129 or 132; the commissioner is required to issue appeal effect orders within two months of the date of the said Order. As per s. 137(2) of the Income Tax Ordinance 2001; where any tax is payable under an assessment order or an amended assessment order or any other order issued by the Commissioner under the Ordinance 2001, a notice shall be served upon the Taxpayer in the prescribed form specifying the amount payable and thereupon the sum so specified shall be paid within 15 days from the date of service of the notice. The Hon'ble Judge was of the opinion that such procedure cannot be bypassed by serving an earlier notice. In the circumstances, the Defendants were decreed to deposit the sum recovered by the Department from the various banks in which the Plaintiff had deposited cash; with the Nazir of the Court.
2017 PTD 1687 SUPREME COURT OF PAKISTAN	Ss. 2(11) & 136 of the Income Tax Ordinance 1979.	A sale of immovable property was exempt from the incidence of tax on Capital Gains. However, the Department had insisted that the income generated through the sale of immovable property was to be placed under the head of income from business or profession on account of the fact that the same was an *adventure in the nature of the trade* in terms of s. 2(11) of the repealed Ordinance of 1979 thus the profit/surplus made on the sale thereof was a profit and gain of a business carried on by the appellant and was therefore chargeable to tax. Hence the question before the Honourable Supreme Court to answer was whether the act of buying and selling of a single property an adventure in the nature of trade and hence rendering it as a business? After relying on a number of persuasive authorities; the Supreme Court opined that there is no hard and fast rule of whether a transaction constitutes as an adventure in the nature of a trade and as such, it depends on a number of factors that are particular to each case. However, the CJ ruled that in order to make such determination, a number of guiding principles can be employed. They are as follows: a) There must be a continuous, regular or habitual activity for the purpose of earning or gaining a profit; b) In the absence of contrary facts, a single transaction cannot constitute an adventure in the nature of trade; c) Intention to resell is not necessary to constitute it as a adventure in the nature of trade; d) The conduct of the assessee surrounding the transaction; was there a frequency in similar transactions? e) There must be a positive material brought on record to prove that the assessee intended to indulge in such a sale.

		Further, it was emphasized that the law is clear on the fact that the burden to prove that an assessee's receipts fell within the scope of income and were liable to be taxed lies on the department. Reliance in this case was placed on the case reported as *1991 PTD 999.* Since the Department was unable to prove the continuous nature of such transaction or anything to discharge the aforementioned burden, it was ultimately held that this particular one off transaction was not an adventure in the nature of a trade.
2017 PTD 1731 SUPREME COURT OF PAKISTAN	Ss. 120(1A), 121, 122(1)(5A), 176 & 177 of the Income Tax Ordinance 2001	In a case relating to the amended assessment of CNG Filling Stations; the Supreme Court, on hearing an appeal from the High Court were required to contemplate on the question whether the formula determined by OGRA in converting the MMBTU into Kilograms, is capable of being considered *'definite information'* for determining sales of the assessee and thereafter amending the self assessment that was made by the taxpayer. The Honorable Supreme Court held that the definite information as illustrated in s. 122 of ITO 2001 does not necessarily mean that the information which is in receipt of the tax officer cannot be processed further. Relying on the dictionary meaning of the word 'definite'; it was held that definite does not only mean being certain of something but that it also means that one knows with certainty that something will happen. Hence, the formula determined by OGRA in converting the MMBTU into Kilograms, is capable of being considered *'definite information'* for the purpose of amending the assessment of the taxpayer under s. 122(5) of the Income Tax Ordinance 2001.
2017 PTD 1642 SUPREME COURT OF PAKISTAN	Ss. 23(1)(v), 107 and Third Schedule of the Income Tax Ordinance 2001	The taxpayers had in their returns, claimed tax credits and depreciation allowance under the Ordinance on its plant and machinery. The assessment, after being amended by the Department calculated the depreciation allowance after subtracting tax credit(s) from the written down value of the assets which resulted in reducing the taxpayer's claim of depreciation allowance. The Supreme Court of Pakistan was hence required to contemplate whether the taxpayer is entitled to depreciation calculated on the written down value of assets without reducing it by the tax credit(s) available to it under the repealed Ordinance 1979. were to be excluded while computing the depreciation allowance. The rules relating to the depreciation were clear in stressing that the claim of depreciation shall be calculated on the basis of the actual cost to the assessee and not the total cost of the asset. The rules governing the depreciation allowance provided that when calculating the actual cost of the asset; the **value of assistance received by an assessee from Government or any other authority or person** and **thededuction or allowance admissible under the repealed ordinance** had to be excluded. The Department had asserted that when an assessee claimed tax credit at the rate of 15%; the cost of the assets for which depreciation was being claimed was accordingly reduced. Furthermore, the assets subject to the depreciation allowance are not covered by the value of assistance provision and hence the reduced value should be factored into determining the actual cost of the asset. Whereas the taxpayer had maintained the stance that the depreciation is to be claimed on the actual cost of the depreciable asset and not from the taxpayer's

		income. Relying on the dictionary meaning of the word "tax credit"; the Supreme Court, at the outset, had held that the tax credit means the amount which is directly offset against or adjusted from the tax liability and not the gross income. Hence, it had to be considered if the term tax credit could be attracted to any of the two exclusions. The Supreme Court was quick to determine that tax credit would not fall under the "value of assistance" exclusion. The question that the Supreme Court was left to decide was if "tax credit" could fall under the second exclusion i.e. if tax credit was a deduction or allowance admissible under the repealed Ordinance. Answer in the affirmative could result in the aforementioned question being decided against the Department and in favour of the taxpayer. This was tricky because the exclusion did not make any distinction between the **deductions** from the taxable income and the **deductions** from the tax payable. However, since the exclusions had used the words: "any deduction" and "admissible under the Ordinance"; it was held that the tax credit had to be excluded from the calculation of the depreciation allowance. In the circumstances, the appeal was dismissed in favour of the taxpayer.
2017 PTD 1561 SUPREME COURT OF PAKISTAN	Ss. 153(1)(c), 153(3) and 169(b) of the Income Tax Ordinance 2001	The question to be determined by the Supreme Court was whether the general exemptions provided under various clause of the Second Schedule was applicable to the Income falling under the fixed tax regime. Considering the fact that the relevant exemption listed in the Second Schedule was aimed at providing relief to the taxpayers whose business was suffering due to the external factors in the region where the income from profit and gains was exempted. The fact that the taxpayer was located outside the area in which external factors made it difficult to do business and was merely performing its business activities in an area where profits and gains were exempt from tax makes it unlikely that the said taxpayer falls under the circumstances for which the exemption was granted to the concerned taxpayers in the first place. Furthermore, the fact that the taxpayer initiated his business after being awarded a contract solicits the presumption that he would have factored in the amount of fixed tax that would be applicable in his case to the price of his financial bid. The above findings were without prejudice to s. 169(2)(e) of the Income Tax Ordinance 2001 which provides that no refund of the tax shall be deducted from the payments made to the taxpayer falling under the 'final tax regime' unless the tax has been deducted at a rate higher than what has been specified in the provisions of the Ordinance of 2001.
2017 SCMR 1427 SUPREME COURT OF PAKISTAN	Section 11 of the Sales Tax Act 1990	In this case the Hon'ble after examining the provisions of sub-section 4 of Section 11 of the Sales Tax Act, 1990 has held that its application is mandatory.
2017 SCMR 999 SUPREME COURT OF	INTERPRETATION OF STATUTES	Provision of Special law overrides the provisions of the general law to the extent of any conflict or inconsistency between them.

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2017 SCMR 339	INTERPRETATION OF STATUTES	Proviso is an exception to or qualifies the main provision to which it is attached. The purpose is to qualify or modify the scope or ambit of the matter dealt with in the main provision. It has to be construed strictly. Before a proviso can have any application, the section itself must apply.