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APRIL 2018 TO MARCH 2019

A publication covering information on recent important judicial pronouncements, notifications and circulars relating to the direct and indirect taxes

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 and knowledge sharing programs on different topics have also being held. This publication, you would appreciate is a step towards this direction and I am hopeful, the members benefit from this contribution of ours. Following the tradition, we also launched Professional Development Program (PDP) and Advanced PDP Program, which were designed for professionals in practice and have been recently concluded. 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 E-news & 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,

Mohammad Rehan Siddiqui

FROM THE DESK OF THE CONVENER

Dear Fellow Members,

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

We have compiled in this issue, the important case laws, Circulars, Notifications, etc. relating to direct and indirect tax laws of the Country alongwith their brief gist. The material covered in this publication relates to the period of one year from April 1, 2018 to March 31, 2019.

I am hopeful that this issue would provide the members of the Bar the information and knowledge that is helpful for them in dealing with the issues that they come across while performing different roles in their respective professional capacities

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

I would like to thank to the members of E-News & Views Committee for their valuable input and continued support extended during the compilation of this publication.

Yours in service,

Muhammad Mehmood Bikiya

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

SYNOPSIS OF IMPORTANT CASE LAWS

DIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
[(2018)117 TAX 509 (S.C. Pak.)] 2018 PTD 1474 2018 PTCL 661 (Full Bench)	120(1)(b), 122(2) & 122(5A)	In this case, the time limitation for amendment of assessment under section 122 came into deliberation before the Hon'ble Supreme Court of Pakistan. Though in the famous case of *C.M. Anwar,* the issue was decided but a full bench was constituted, as reportedly a two member bench took a view opposite to the one taken in *C.M. Anwar* case. The department appeals were dismissed and view given in *C.M. Anwar* case was retained. It was contended by the department that limitation is a procedural amendment, hence amendment made by Finance Act, 2009 to compute the time from the end of the financial year shall be applicable on all tax year prior to the year of enforcement. The apex court held that rights related to the law of limitation came to vest in the respondents on the date of filing of their respective returns. The court observed that the amendment changed the commencement date for when limitation would begin to run and this was not permissible as certain rights had already come to vest in the respondents on the date on which they had filed their tax returns.
2018 PTD 2009 (Supreme Court of Pakistan)	37(I)(A) of the Income Tax Ordinance 2001	In this case, all the appeals filed by the taxpayer for tax year 2013 upto the level of High Court have failed. The final appeal against the assessment of income under section 37(1)(A) and 111(1)(2) were filed before the Hon'ble Supreme Court of Pakistan. The appeal did not find favour and was dismissed. The taxpayer contended that the holding period of the property was more than two years, hence the income from the sale of property is not chargeable to tax under section 18 and qualifies for the zero rate given in section 37(1)(A). The Supreme Court accepted the department version that taxpayer was carrying on real estate business for many years and no reliable material was placed on record to avail the benefit of section 37()(A). The other plea of the taxpayer, regarding amassing the opening wealth, was also not accepted, as the counsel was unable to explain the source of income which resulted in such accumulation. The findings given by the Supreme Court in this case based on the indolent of the taxpayer, where he failed to satisfy the court on factual grounds. Therefore, before drawing any conclusion about the taxability of income from sale of property, facts of the each case may be referred.
(2018) 118 TAX 260 2018 PTD 1204 (Supreme Court of Pakistan)	148(1) & 148(5)	In this case, multiples questions relating to Customs, Sales Tax and Income Tax were raised by the department against the judgment of Hon'ble Peshawar High Court. The taxpayer's contention before the Hon'ble High Court was that income tax and sales tax are not applicable on them because the business is

CITATION	SECTION(S)	ISSUES INVOLVED
		situated in PATA, a place where the Income Tax and Sales Tax laws are not applicable due to Constitutional limitations. The High Court in its judgement laid down the procedure for ensuring that the goods on which tax was imposed were intended for the exempt area. On department insistence, the apex court discussed various case laws on the matter in the light of Constitutional entries for Sales Tax, Customs Act and Federal Excise Duty. Member are requested to read the judgement for understanding the relevant entries given in the Constitution for understanding the bases of Sales Tax and Federal Excise Laws.
2018 PTD 693 118 TAX 483 [Supreme Court (AJK)]	206 [Clause 1(2), Part III, Second Schedule]	In this case, teachers were denied reduction of tax liability on the pretext that Federal Board of Revenue (through Circular 6 of 2013) had restricted the reduction to full time teachers. As per Circular, teachers who are performing administrative functions are not entitled to reduction in taxes. The High Court granted relief to the teachers. The department went into appeal before Hon'ble Supreme Court (AJK). Both the courts observed that there is no change in substantive law regulating the reduction is tax liability. No amendment or change has been made in relation to term "full time teacher", thus, the circular which has been issued for clarification of Finance Act, 2013 cannot be applied against the practice operative in the department since long.
2018 PTD 1444 2018 PTCL 678 [Supreme Court of Pakistan]	214C & 177	In this case, cross appeals were filed against the Lahore High Court judgement on selection of tax under section 214C. The apex court maintained the judgement of the High Court. The selection under section 214C of the Ordinance was upheld. The time frame to complete the audit by December 31, 2017 was also upheld.
2018 PTD 1128 2018 SCMR 963	23(xviii) of the Income Tax Ordinance, 1979	In this case, expense relating to sports facility to the employees was disallowed by the Hon'ble Supreme Court of Pakistan. It has been held that the expense incurred for sports facility is barred by section 23(xviii) as it was incurred to setup a complimentary facility for the employees which has no direct nexus with the generation of the respondent's income.
2018 PTD 1134 2018 SCMR 1131 2018 PTCL 730	221(4)	In this case, the Hon'ble Supreme Court of Pakistan decided two questions of law. - Application of section 221 on the assessment covered under the repealed Income Tax Ordinance, 1979. - Levy of surcharge on minimum tax under section 80D. The Hon'ble Court has held that limitation is a procedural law, therefore, if the limitation under the repealed Ordinance has not expired than section 221 would be applicable, being a procedural law. Whereas, on the question of charging surcharge on minimum tax it was held that it cannot be imposed over minimum tax.

CITATION	SECTION(S)	ISSUES INVOLVED
(2018) 118 TAX 247 2018 PTD 1306 (SC Pak.) 2018 SCMR 894 2018 PTCL 783	80C of the Repealed Income Tax Ordinance, 1979	This is a very interesting judgment from the Hon'ble Supreme Court of Pakistan taking into account the rationale behind the concept of income and literal application of law by the tax authorities without considering the facts involved. The case pertains to tax on imports made by PSO. The import was made on behalf of President of Pakistan by PSO making it entitled to commission income. The tax authorities took a literal meaning of import under section 80C of the repealed Ordinance and assessed the imports in the hands of PSO on the bases of GD, which were ostensibly in the name of PSO. The court rejected the department contention with the following observations. *The principle of law is clear on the constitutional plane. Entry 47 of the 4th Schedule to the Constitution authorizes the levy of tax on income other than agricultural income. This implies theoretically that tax can be levied upto, or below, the total income. If the levy, exceeds 100 percent of the income it prima facie amounts to a confiscation of the property of the assessee since he has to meet it from his other unrelated assets, if any. While some allowance can be made to deal with cases of tax evasion (and the present is obviously not such a case), it is on the face of it, unjustifiable to create a tax demand which is ten times more than the total income received as has been done in the present case.*
2018 PTD 1808	19(1), 19(2)(a), 22(a), 22(b) & 22(c)	In this case, the taxation of income from renting out of property case into discussion. The taxpayer offered the rental income under the head 'income from business' on the premise that the property in question was not in its 'ownership', which is the fundamental point for tax under the head income from property. However, the department insisted that income is taxable under the head 'income from property'. The Hon'ble Court held that where ownership has not been transferred, the income could not be treated under the head 'Income from property'. The Court has further discussed the legal formalities, which constitute transfer of ownership. The case law is interesting from the legal perspective therefore, suggested to be read in full.
2018 PTD 1933	Section 9	In this case, a person claims for reward for providing definite information about tax evasion by seafarers. The person filed a complaint to the Ombudsman, which was accepted and department was ordered to pay the reward. In further litigation, the High Court directed payment on the bases of Ombudsman order. In appeal, the Supreme Court reviewed the whole matter and came to the conclusion that the person did not provide any definite information which resulted in recover of tax evaded. The apex court discussed various case law in the context of 'definite information' and 'tax evasion'. The discussion made by the Hon'ble Court is very valuable and may be helpful in other case of like nature.
2019 PTD 291 Supreme Court of Pakistan Dewan Khalid Textile Mills Ltd	Section 65 and 80B of the Income Tax Ordinance, 1979	In this case Civil Appeals were filed by the appellant company before the Hon'ble Supreme Court against impugned judgment of the Hon'ble High Court reported as Commissioner of Income Tax V. Dewan Khalid Textile Mills Ltd. (2010 PTD 1397). Leave to appeal was granted by the Hon'ble Supreme Court to consider whether there was any 'definite information' within the meaning of section 65 of the Income Tax Ordinance, 1979 to reopen assessment of the appellant company in regards to accrued income in terms of section 80B.

CITATION	SECTION(S)	ISSUES INVOLVED
Versus Commissioner of Income Tax (Legal Division), LTU, Karachi		Learned counsel for the appellant submitted that the High Court has erred in rejecting the appellants plea that no definite information existed and that reliance by the High Court on a judgment reported as 2004 SCMR 1319, in which observations have been made with regard to section 80B, is misconceived as the said judgment was rendered many years after the initiation of the proceedings under section 65. The learned counsel further submitted that the reopening of assessment was a mere change of opinion by the ITO which could not be construed as 'definite information'. Learned counsel for department defended the impugned judgment and placed reliance on a recent judgment of the Supreme Court reported in 2017 SCMR 1414. The Hon'ble Apex court held that the learned High Court has erred to rely on the Genentech case reported as 2004 SCMR 1319 without appreciating the fact that it was rendered many years after the initiation of action under section 65 in the case at hand. It further observed that as it did not exist at the relevant time it could not ipso facto constitute 'definite information' and therefore the ITO could not reopen the assessment. The Court further also went on to distinguish the judgment relied by the learned counsel for the respondent as it was materially different from the case. For the foregoing reasons the said appeals were allowed and the impugned judgment was set aside.
2019 PTD 523 Supreme Court of Pakistan Oxford University Press V. Commissioner of Income Tax	Clause (86) of Part I of the Second Schedule to the Repealed Income Tax Ordinance, 1979	In the case Civil Petition were filed before the Hon'ble Supreme Court of Pakistan against a judgment of the High Court of Sindh which is reported as Oxford University Press V. Commissioner of Income Tax, 2007 PTD 533. The said Civil Petitions were filed under the Income Tax Ordinance, 1979 and subsequently leave to appeal was granted by the Hon'ble Court. Brief facts are that the Oxford University Press had claimed exemption from tax under clause (86) of Part I of the Second Schedule of the Income Tax Ordinance, 1979 for different assessment years. The department through its counsel submitted that the exemption was not applicable in the present case as it alleged that Oxford University carried no educational activities in Pakistan and that commercial activities were being carried out which were beyond the scope of the exemption. Learned counsel placed reliance on a judgment of Indian Supreme Court reported as 247 ITR 658. On the contrary, learned counsel for the appellants argued that Oxford University Press is a branch of Oxford University which was established solely for educational purposes, therefore, any income earned would enjoy the benefit of the said exemption clause. Learned counsel relied on decisions from other commonwealth countries including South Africa where similar controversy had taken place and judgment found favor with the assessee. The Hon'ble court agreed with the submissions made by the appellants and held that the appellant could not be denied the benefit of the exemption on the basis of a supposed intention of the legislature in regards to the effect of Clause (86). It was held that it was not necessary that the University was carrying on educational activities in Pakistan and agreed with the minority view taken in the Indian Supreme Court case reported as 247 ITR 658. The court further critically examined Clause (86) and concluded that the judgment by the Sindh High Court could not be sustained and hence appeals were allowed and impugned judgment was set aside.

CITATION	SECTION(S)	ISSUES INVOLVED
(2019)119 Tax 19 S.C. Pakistan	Section 151 of the Repealed Income Tax Ordinance, 1979	In this case a partner of a firm had claimed exemption of his shares of profit on the ground that he is also entitled to exemption. The taxpayer failed in both the appeals under the law, however, the matter was referred to the High Court by framing the question under section 136(1) of the repealed Ordinance, 1979. The Hon'ble High Court held that exemption granted to the firm could also be availed by the partner of the Firm and the reference application was allowed. Before the Hon'ble Supreme Court of Pakistan, the Department referred to section 151 of the Repealed Ordinance, 1979 and submitted that the benefit cannot be extended to a partner of a firm as only a firm is entitled to such exemption. Such contention was accepted by the Hon'ble Supreme Court of Pakistan and it was observed by their lordships that section 151 of the repealed Ordinance, 1979 contemplates that the benefit of a particular exemption could only be claimed once. Any recipient of such exemption income would be receiving income out of the exempt income could therefore, not claim the benefit of exemption for second time. For the benefit of the members, the corresponding provision in the Income Tax Ordinance, 2001 is given under section 55.
(2018) 118 Tax 305 S.C.	Section 23 of the repealed Income Tax Ordinance, 1979	In this case the taxpayer claimed expenses incurred by the taxpayer on events of sports and social activities organized for the benefit of the taxpayer's personnel and members of their family. The Hon'ble Supreme Court after examining the facts of the case interpreted the section 23 of the repealed Ordinance, 1979 and held that only such allowance and deductions are permissible which in some manner have nexus with the income i.e. driven from business or profession.
2018 PTD 1942 (LHC)	214C of the Income Tax Ordinance 2001	In this case, the petitioner had challenged the selection of case for audit under Audit Policy, 2016 on the premise that the parameters for audit were informed after selection of case for audit. The plea taken by the petitioner was accepted by the Court. The Hon'ble Court rejected the manner of selection under section 214C and observed that the guiding principles for selection of case, as laid down by superior court, were not followed by FBR. The Hon'ble Court referred to is decision reported as PTCL 2013 CL. 579, in which the crucial finding of the Division Bench was that FBR had to show that risk parameters had been duly framed by FBR and publicly advertised for the sake of taxpayers convenience alongwith the risk strategy adopted by FBR. While observing that the essential requirement is for the risk parameters to be laid down and clearly defined alongwith the audit policy by FBR and those risk parameters should form the basis for parametric selection and none else, the court accepted the petition and the notices were set aside.
2018 PTD 2208 (SHC)	177, 214C & 120 of the Income Tax Ordinance, 2001	In this case, the taxpayer had sought injunction from the court against audit under section 177(1), which was declined. A declaratory Suit was filed on receipt of notice for conducting audit and stay was obtained. Taxpayer's contention was that company is based and operated from Netherland and its income was exempt under Article 7 of the Treaty Netherlands and Pakistan. During the pendency of the case, the Supreme Court of Pakistan issued directions for payment of 50% of the disputed amount of tax. The taxpayer took a plea that Department is yet to ascertain the amount, which might be payable by the Plaintiff. The plea was accepted, however, the court reviewed the request for extension of injunction against audit. However, the court observed that audit in itself is not an adverse action, conduct of an audit is not even an inconvenience, if

CITATION	SECTION(S)	ISSUES INVOLVED
		a taxpayer fulfils its statutory duty by maintaining the record under the Ordinance. Hence, the court declined the request for injunction and the listed application was dismissed.
2018 PTD 900 (SHC)	133, 161 & 205 of the Income Tax Ordinance, 2001	In this case, a reference was filed by the Commissioner Inland Revenue against the relief allowed by the Appellate Tribunal Inland Revenue against default surcharge. The Hon'ble Court declined to interfere and the reference was dismissed. The Deputy Commissioner had imposed default surcharge under section 205 of the Income Tax Ordinance, 2001. The ATIR cancelled the order by observing that in the absence of opening date and terminal end and without determination of the default period the levy of default surcharge is not possible as both opening deductible event and terminal end are missing in the instant case. It was further observed that levy of default surcharge on hypothetical basis and without establishing wilful default on the part of taxpayer is illegal and nullity in the eye of law as held in reported cases cited as 2006 SCMR 626 (SC).
2018 PTD 977	122(5A) of the Income Tax Ordinance, 2001	In this case, the petitioners had challenged the notices issued for tax year 2010, 2011 and 2012 under section 122(5A) making enquiries as per amendments introduced by Finance Act, 2012 in section 122(5A). The Hon'ble Court accepted the petitions and set-aside the notices. The Hon'ble court held that though the amendment made in section 122(5A) by Finance Act, 2012 are procedural in nature but where any amendment impacts the substantive rights it is an established principle that the amendment/law operates prospectively. The Court concluded that enquiries made pursuant to the amended law could modify the assessment by effecting the substantive rights, hence such law shall operate prospectively.
2018 PTD 996	11(1)(c)(d), 53, 54, 122 & 133	In this case, the reference was filed before Hon'ble High Court claiming that the sale of 'working interest' is not chargeable to tax. The Hon'ble High Court did not entertain the claim of the applicant and upheld the taxability of income arising out of the sale of 'working interest'. The applicant company was granted rights under concessional agreement and was one of the working interest owner. The company sold its working interest in to BP Pakistan Exploration and Production Inc. The applicant company contended that is had sold its interest in an immovable property and in the context of sub-sections (9) and (10) of section 101 of the Ordinance of 2001; the Working Interest if not a capital receipt at best may be treated as capital gains; the Federal Government is not empowered to levy tax on account of the transfer of an interest in immovable property which was leased out to the applicant. The Hon'ble Court after exhaustive deliberation concluded that no right is created in favour of the Working Interest Owners or any one of them in any specific immovable property. It was concluded that the lease granted under the Petroleum Rules,1986, is in the nature of a license and it is not a lease as defined under section 105 of The Transfer of Property Act, 1882. The Hon'ble Court held that the income due to sale of 'working interest' is taxable under section 39 of the Ordinance. The Hon'ble Court further dismissed the argument of the applicant that as per concessional agreement the provisions of Income Tax Ordinance, 1979 will apply to the transaction. The Court repelled this argument. Another

CITATION	SECTION(S)	ISSUES INVOLVED
		contention of the applicant regarding delegation of assessment by the Commissioner under section 122(5A) was also rejected by the Court.
2018 PTD 1582 (LHC)	2(22A) & 133 of the Income Tax Ordinance, 2001	In this case, the Hon'ble Lahore High Court held that household electronic goods can be termed as consumer goods for the purpose reduction of rate on turnover as per clause (8) of Part III of Second Schedule read with section 113 of the Ordinance applicable for tax year 2012. The Hon'ble Court held that rule of ejusdem generis is not applicable, instead the rule of Expressio unius est exclusio alterius' (the express mention of one thing excludes all others) is applicable. Therefore, the term 'consumer goods' covers the activity of the taxpayer, making it eligible for reduce tax rate under section 113.
2018 PTD 654 (IHC)	170 & 127 of the Income Tax Ordinance, 2001	In this case, the Hon'ble Islamabad High Court turned down the request of the petitioner under Article 199 of the Constitution because appropriate remedy of appeal to CIR (A) under section 127 of the Ordinance is available. The petitioner was aggrieved by the rejection of refund applicable despite verification of tax deduction. The petitioner prayed that despite verification process, refund was rejected and demand was raised by an amended assessment order.
2018 PTD 719 (IHC)	147 & 205	In this case, the petitioner filed a Nil estimate of advance tax for tax year 2017. In response, the department issued notices, seeking proof of payment of tax and justification and basis for estimation. The Hon'ble High Court accepted the petition and notices were set-aside. The High Court on the basis of reported decisions viz. 2010 PTD 2502, 2011 PTD 476, 2011 PTD 1996 and 2006 PTD 2498 held that if the estimation filed by the petitioner is incorrect, the respondent department may proceed against the petitioner under section 205 of the Ordinance when the tax returns are filed by it.
2018 PTD 749 [(2017) 116 TAX 347 (H. C. Lah.)]	122(4)(5) of the Income Tax Ordinance, 2001	In this case, the Hon'ble Lahore High Court confirmed the assessment order passed on the basis of 'definite information' acquired from the raid under Sales Tax Act, 1990 by the Deputy Director Intelligence and Investigation Inland Revenue. The assessment was framed under section 122 after obtaining definite information from the seizure of documents and computer-stored information/records by Deputy Director Intelligence and Investigation Inland Revenue from raid conducted on the business premise of the taxpayer. The taxpayer contended that the information was secured through unlawful means and was a consequence of an unlawful raid and seizure, hence such information is not 'definite information' The Hon'ble Court held that the only such information is excluded from the domain of "definite information" which is incomplete information and requires further inquiry into the affairs of the taxpayer before the Department can reach a conclusion. Whereas, in this case Vouchers, sale invoices, cheque books and bank statements were loudly telling that the Respondent's income chargeable to tax had escaped assessment.
2018 PTD 806	12(1), 12(2), 12(2)(C) & 127 – Clause (39),	In this case, the Hon'ble Peshawar High Court held that the Special Judicial Allowance paid to Judicial Officers of the District Judiciary of Khyber Pakhtunkhwa, Officers of the Peshawar High Court is not liable to tax as

CITATION	SECTION(S)	ISSUES INVOLVED
(2017) 116 TAX 335 (H.C. Pesh.)	Part I of the Second Schedule to the Ordinance, 2001	these are excluded from the salary as per clause (c) of sub-section (2) of section 12 of the Ordinance. It was held that the Special Judicial Allowance granted to the petitioners was in appreciation of their performance of duties and thus would not fall within the scope of "salary", and thereby not chargeable to Income Tax under the charging sub-section (1) of section 12 of the Ordinance.
2018 PTD 821 (2018) 118 TAX 393 (H.C.Lah)	122 & 177 of the Income Tax Ordinance, 2001	In this case, the petitioners have challenged the notices issued under section 177 of the Ordinance for conducting audit without providing an opportunity of being heard. The Hon'ble High Court, after lengthy discussion, have repelled the challenged and dismissed the petitions. The Hon'ble High Court has decided the following three questions: - Whether the impugned notices under Section 177 of the ITO were required to contain reasons for summoning the record to conduct audit of the taxpayers and non-disclosure of reasons should automatically lead to such notices being struck down? - Whether the Commissioner could have issued notices under Section 177 of the ITO as substituted by Finance Act, 2010 for the tax year 2009? - Whether notices under Section 177 of the ITO could be issued by the Commissioner without selection of the case of the taxpayer for audit by the Federal Board of Revenue in terms of Section 214-C of the ITO? The Hon'ble Court concluded that presently merely notice has been issued and no adverse action has been taken or order passed against the petitioner. The petitions are premature filed on the basis of apprehensions and without exhausting departmental remedies.
2018 PTD 612	122 (1), 128 (5) & 113 (1)	In this case, appeal was filed by the department before the Hon'ble Islamabad High Court against the acceptance of documents before CIR(A) for the first time, which was also confirmed by ATIR in second appeal filed by the department. The appeal was dismissed by the Hon'ble High Court by accepting the CIR(A) observations. The Hon'ble High Court held that since the CIR(A) has given reasons for acceptance of documents in appeal, the requirement of section 128(5) are fulfilled, which require CIR(A) to give reasons about fact due to which the taxpayer was prevented to furnish the documents before the assessing officer. The CIR(A) in his order has observed that since notice of the proceedings, which were exparte completed, was not served on the taxpayer, therefore, he could not present the documents before the assessing officer.
2018 PTD 1089 2018 PTCL 832	17(1), 23(1)(x), 24(i) & 32	In this case, the Hon'ble Islamabad High Court decided three issues with respect to banking industry. The appeals were contested on the issue of: - Taxation of income from Government Securities. - Non-performing loans i.e. bad debts. - Concessional loans to employees. It was held that income from Government Securities shall be taxed on the method of accounting regularly employed, which in the case of bank is accrual, hence, the income shall be taxed on accrual basis.

CITATION	SECTION(S)	ISSUES INVOLVED
		On the question of bad debts it was held that 'irrecoverable' has to be read in the context of the regulatory framework issued by State Bank of Pakistan, which governs the Banks. The question relating to concessional loan was decided in favour of banks as the ATIR finding, which was based on facts, was not based on misreading or non-reading of evidence.
(2018) 117 TAX 434 2017 PTD 2114	175	In this case, the petitioner challenged the action of tax authorities i.e. power to enter and search premises under section 175 of the Ordinance. The Hon'ble High Court did not accept the challenged and petition was dismissed. The petitioner had argued that powers under section 175 are similar to powers under section 38 of the Sales Tax Act, 1990. Therefore, before taking action under section 175, the department must follow the procedure prescribed under section 40 of the Sales Tax Act, 1990 would be applicable. The Hon'ble court observed that section 175(7) has an overriding effect, therefore, the action under section 175 do not suffer from illegality.
(2018) 117 TAX 447 2017 PTD 2162	122(5), 111, 120 & 133	In this case, a case was made against the taxpayer on the basis of suppression of sales which were transferred to a benami bank account of individuals instead of the company. Additions were made under section 111(b) by way of amendment of assessment under section 122(5) of the Ordinance, by treating the information received from the benami bank accounts as 'definite information'. The first appeal before the CIR(A) resulted in confirmation of the order. However, in second appeal the ATIR, the assessment order was cancelled on two points. It was held that there was not 'definite information' available to the Commissioner to amend the assessment, further, the provision of section 111(d) which was introduced by Finance Act, 2011 cannot be applied to tax year 2005 i.e. with retrospective effect. In appeal filed before the Hon'ble High Court, both the questions were decided against the taxpayer. It was held that information received from the bank accounts was 'definite information' and the addition was made under section 111(b) and not under 111(d) was held by the ATIR.
2018) 117 TAX 493 (H.C. Sindh) 2016 PTD 2664 (H.C. Sindh)	177 of the Income Tax Ordinance, 2001	In this case, challenge to notice for selection of case under section 177 was made by the taxpayer company before the Hon'ble High Court of Sindh. The taxpayer relied upon the judgment of Islamabad High Court (2016 PTD 1484). However, the High Court disagreed with the taxpayer's argument that justification of selection may be decided before audit is initiated. The Hon'ble Court observed that it cannot introduced a condition which is not present in the law. The suit of the plaintiff was dismissed.
[(2018)117 TAX 527 (H.C. Kar.)]	119(3)(4), 133 & 182	In this case, penalty was imposed on the taxpayer for late filing of return for tax year 2005. The penalty was waived by the Tribunal against which department filed appeal before the Hon'ble High Court of Sindh. The facts of the case were such that the taxpayer had filed request for extension of time under section 119 for filing of return. The Hon'ble Court held that since the taxpayer had filed the request for extension of time, which

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		were not rejected by the taxation officer, the penalty for such delay is not adequate. The penalty was cancelled.
2018) 117 TAX 590 2017 PTD 2227	221 & 122 of the Income Tax Ordinance, 2001	In this case, the Hon'ble Baluchistan High Court upheld the application of section 221 on the return filed by the tax, if the mistake is found in the return of income. The taxpayer had classified the income from lease of land under the head 'Income from Business. The department was of the view that the income should be taxed under the head 'Income from Other Sources', hence return was rectified. The first and second appeal before the CIR(A) and ATIR failed. The High Court held that classification of income under a wrong head is a mistake which can be corrected under section 221 of the Ordinance.
(2018) 117 TAX 616 (H. C. Kar) 2017 PTD 864	18(1)(d), 133(1)	In this case, interest free loans received by the company from its directors was treated as income under section 18(1)(d). However, the addition was deleted by the ATIR, against which the department filed appeal before the High Court. The Hon'ble High Court did not interfere with the findings of the ATIR as it observed that there is no business relationship between the Company and its directors.
(2018) 118 TAX 12 (H.C.Lah) 2017 PTD 1387	S.177--- Law Reforms Ordinance (XII of 1972	In this case, an intra-court appeal was filed by the department against the order of the Single judge. The appeal was late by 37 days. The reason assigned for the delay was due to procedural constrains. The permission was to be sought from the Federal Board of Revenue for the purpose of filing all the Intra Court Appeals. The reasons were not accepted by the Hon'ble Court and the appeal was dismissed as barred by limitation.
(2018) 118 TAX 171 (H.C.Lah). 2018 PTD 287	Section 4B	In this case, the provisions of section 4B were challenged on various constitutional points. The Hon'ble High Court of Lahore dismissed the petition after founding that the provision of section 4B is a valid piece of legislation and legislature was competent to enact the same.
[(2018) 118 TAX 209 (H.C. Lah.)	13(1)(aa)	In this case, the Hon'ble Lahore High Court held that proviso introduced in section 56 of the repealed Income Tax Ordinance, 1979 by Finance Ordinance, 2001, being remedial in nature is applicable on applicable on assessment finalized before the introduction of the proviso. Interestingly, the assessment was finalized prior to the enactment of limitation period. However, the Court after discussing various case laws, came to the conclusion that limitation would apply on proceedings pending in appeal.
2017 PTD 1181 (2018) 118 TAX 218 (H. C. Isl)	Sections 2(29C)(a)(i) to (iv), 133, 148, 148(7)	In this case an interesting legal question about adjustment of tax collected at import stage from telecom industry came into dispute. The department was of the view that telecom industry not being 'industrial undertaking' is not allowed to adjust the tax collected at import stage, instead the tax is covered under Final Tax Regime. The Hon'ble High Court reviewed the provisions of section 29C and observed that in order to read the provisions of section 29C clauses (i) to (iv) have to be read separately, instead of jointly as done by Tribunal.

CITATION	SECTION(S)	ISSUES INVOLVED
		The Hon'ble High Court observed that there appears to be force in the argument advanced by the learned counsel for the Taxpayers that the telecommunication systems used by the companies engaged in providing telecommunication services are covered under the definition of an 'industrial undertaking'. Data processing through various machines, equipment and other modes would also be covered within the meaning of 'subjection of goods and materials to any processes. The case was remanded to the Tribunal to give finding in the light of the facts of the case.
2018 PTD 612 [Peshawar High Court]	122 (1), 128 (5) & 113 (1),111(1)(b)	In this case, department had filed an appeal before Peshawar High Court on the issue that CIRA has violated the provision of section 128(5) of Income Tax Ordinance, 2001. The contention of department was that section 128(5) places bar on the Commissioner not to admit any documentary material or evidence which was not produced at the time of initial proceedings, so CIRA has travel beyond the scope of section 128(5) by accepting the documents in appeal. The Court held that the departmental objection CIRA has violated the provisions of section 128(5) is not correct, therefore the order of CIRA on this score is confirmed.
2019 PTD 535 Lahore High Court Muhammad Mujahid Qureshi V. Federation of Pakistan	Section 119 and Section 214D of the Income Tax Ordinance, 2001	Petitions were filed challenging the vires of section 214-D read with section 177 of the Income Ordinance, 2001. Since the question of law already stood decided in earlier petitions the Hon'ble court decided to adjudicate on the second issue which was in relation to section 119 of Income Tax Ordinance, 2001. It was held by the Court that if no response is given by the concerned Commissioner or if the Commissioner fails to decide an extension application under section 119, then it would not be deemed that the Commissioner has impliedly accepted the application. On the contrary, it was observed that the Commissioner shall make an order in writing while granting the application under section 119 and if no order is passed then the application would be deemed to be rejected.
2019 PTD 447 Sindh High Court Commissioner Inland Revenue V/s. M/s. Independent Newspaper Corp	Section 119 of the Income Tax Ordinance, 2001	In this case the respondent taxpayer had filed for extension of time to file return in terms of section 119 of the Income Tax Ordinance. The application of the taxpayer was not entertained and no order was passed by the concerned Commissioner. The Hon'ble court held that the respondent taxpayer could not be held liable to imposition of penalty under section 182 of the Income Tax Ordinance, 2001 for the period in which extension was sought as under the circumstances it cannot be presumed that the request for extension of time to file return, made by the taxpayer under the law stood declined by the Commissioner. Reliance was placed on a unreported judgment of the Sindh High Court in ITRA No.654/2010 wherein similar point of law was adjudicated upon.
2019 PTD 587 Islamabad High Court Oil and Gas Regulatory Authority, Islamabad Vs.	Section 49 of the Income Tax Ordinance, 2001	It was held by the court that the applicants/petitioners, seeking exemption from the payment of tax under section 49(1) to (3) of the Income Tax Ordinance, 2001, cannot be considered as entitled to the exemption from payment of tax as they are not 'Federal Government' 'Provincial Government', nor 'local authority or local body'. It was also further held that section 49(4) does not have retrospective effect as it was a declaratory legislation meant to achieve the purpose which had already been achieved by Article 165-A of the Constitution of the Islamic Republic of Pakistan.

CITATION	SECTION(S)	ISSUES INVOLVED
The Commissioner Inland Revenue,		
(2019) 119 Tax 73 High Court Karachi	Section 214C of the Income Tax Ordinance, 2001	In this case, suits were filed by various companies to challenge the selection of their cases for audit under section 214C on the premise that FBR has exercise its powers under Section 214C without notifying the basis of high risk para metric FED into the computer balloting proceedings; that such conduct is against the law and also discriminatory in law and it was incumbent upon FBR to disclose the parameter and selection which has not been done. Reliance on placed numerous judgments. The Hon'ble High Court while provision examining the section 214C and more particularly its sub-section (1A) was pleased to observe that the provision of sub-section (1A) of section 214C reflects that it is not mandatory for the FBR to disclose and notify the parameters for selection of cases for audit purposes. The Hon'ble Court after examining various judgments in ultimate analysis refused to grant injunctive relief as the plaintiff had no prima facie case or balance of convenience lies in its favour whereas there is no question of any irreparable loss being caused just because of conduct of audit. All the listed applications in the main case and other connected suits were dismissed. However, the Hon'ble directed the department to proceed with the order in terms of para 22 and 23 of judgment of Hon'ble Supreme Court of Pakistan in the case of Commissioner Inland Revenue Sialkot another v/s Allah Din Steel and Rolling Mills and others reported in (2019) Tax 27 S.C.
(2018) 118 Tax 512 Islamabad High Court	Section 122(5A) of the Income Tax Ordinance, 2001	In this case the petitioner assailed notices issued by the Department under section 122(5A) read with 122(9) for Tax year 2010, 2011 and 2012. The petitioner challenged such notices that amendment made through Finance Act, 2012 empowering the competent authority to make enquiries or call for information and contention was made that said amendment was prospective in nature. The Hon'ble High Court Islamabad held that such amendment cannot be retrospective in nature and observed that the new procedure which allows commissioner to make enquiries directly affects the existing right of an assessee regarding modification or revision in assessment, hence it shall operate prospectively. The Hon'ble court while allowing the petition and setting aside the impugned notice observed that the department may proceed against the petitioner under section 122(5A) in accordance with the procedure as it existed prior to the amendment made in 2012.
(2019) 119 Tax 146	Section 170 of the Income Tax Ordinance, 2001	In this case a writ petition was filed against the order of DCIR where the petitioner's application for issuance of refund was rejected. The Hon'ble High Court held that since section 170 of the Income Tax Ordinance, 2001 grants a right of appeal, the petition is not maintainable.
(2018) 118 Tax 332 Lahore High Court	Clause (8) of Part-III of the Second Schedule to the Income Tax Ordinance, 2001	In this case relief of 80% in reduction of tax liability of section 113 in terms of clause (8) of Part-III of the Second Schedule to the Income Tax Ordinance, 2001 was claimed which was rejected by the CIR however, allowed by the learned Tribunal. The Department filed reference under section 133 and matter came up before the Hon'ble Lahore High Court for the determination of the question whether household electronic goods can be termed as consumer goods for the purposes of clause (8) of Part-III of Second Schedule. The Hon'ble court after examining various definitions and meanings of the terms answered the question in favour of the taxpayer.

CITATION	SECTION(S)	ISSUES INVOLVED
2018 PTD 1027	122(5A) of the Income Tax Ordinance, 2001	In this case, the original assessment order for tax year 2009 i.e. the return of income was amended under section 122(5A) which was confirmed by Commissioner Inland Revenue (Appeals), however, in further appeal before Appellate Tribunal Inland Revenue, the assessment order was cancelled being barred by time. The return was filed on 3 February 2010, whereas, the amended order was passed on 24 June 2015. As per law applicable for tax year 2009 the amended assessment order was supposed to be passed within five year after the original assessment order. The law on this issue is now settled as interpreted by the Hon'ble Supreme Court of Pakistan in the famous C.M.Anwar case.
2018 PTD 1054 (Trib.)	177 & 214C of the Income Tax Ordinance, 2001	In this case, appeal against the CIR(A) order was filed by the department, which was accepted, and selection of case for audit by Commissioner under section 177 was maintained. The case of the taxpayer was selected for audit under section 177 of the Ordinance. However, in appeal the CIR(A) cancelled the order by treating holding that after introduction of section 214C, the Commissioner has no power to select a case for audit. The ATIR in the light of latest judgment from Lahore High Court and Islamabad High Court, cancelled the CIR(A) order.
2018 PTD 1062 (Trib.)	113 B, 114, 120, 122(1)(5A) & 177 of the Income Tax Ordinance, 2001	In this case the appeal of the taxpayer was rejected by the Appellate Tribunal, upholding the CIR(A) order that return filed by the taxpayer under section 114 read with 113B can be amended under section 122 of the Ordinance. The taxpayer contention was that he has filed return under section 113B which is not a return of income, hence no action under section 122 can be undertaken. The ATIR held return of income is only filed under section 114 of the Ordinance. Under section 113B, only tax is paid.
2018 PTD 991 (Trib.)	122(3)(5A) & 177 of the Income Tax Ordinance, 2001	In this case, the department file an appeal before the Appellate Tribunal Inland Revenue against the order of CIR(A). The CIR(A) had cancelled the assessment order passed under section 122(5A) on the premise the it was based on fishing enquiry. However, in further appeal the ATIR found that the amended assessment order was barred by time.
2018 PTD 739 (Trib.)	131(5) of the Income Tax Ordinance, 2001	In this case, an appeal was filed by the taxpayer against the order of CIR(A) who had declined application for stay of demand. By majority decision, the ATIR accepted the appeal filed by the taxpayer and allowed stay with direction to the CIR(A) to decide the appeal in thirty days' time. The Accountant Member had rejected the appeal on the ground that the AR has failed to identify mistake in the CIR(A) order. Whereas, the learned Judicial Member accepted the appeal under section 132(6). Due to difference of opinion between the learned Members, the case was referred to the Chairman, who assigned the matter to the third member. The Third member after hearing the matter decided to agree with the Judicial member and allowed the stay.

CITATION	SECTION(S)	ISSUES INVOLVED
2018 PTD 691 (Trib.)	131 of the Income Tax Ordinance, 2001	In this case, an appeal was filed against the CIR(A) with a request to condone the delay of 72 days in filing the appeal. The ATIR declined to accept the appeal and rejected the miscellaneous application. The ATIR observed that "law would support vigilant and not indolent", therefore, any delay in filing appeal is to be considered negligent on the part of that party, thus, the other party should not be penalized for such negligence.
2018 PTD 616	114, 115(4), 153(1)(c), 159, 169(b) & 170	In this case, various taxpayers filed appeal before ATIR seeking relief against the amended assessment order which were confirmed by CIR(A) in the first appeal. The taxpayers were contractors, required to file statement of final taxation under section 115(4), which were filed by them. However, subsequently the return of income under section 114 were filed and refunds were claimed in view of exemption clause (126F) of the Part I of the Second Schedule. The plea taken by the taxpayer's council that statement under section 115(4) cannot be amended under section 122(5A). The contention was rejected on the premise that taxpayer had themselves filed return of income. The other plea about change of opinion by the Addition Commissioner was also rejected by ATIR by observing that the refunds issued by Additional Commissioner were in administrative capacity whereas the amended assessment order has been passed under judicial function. The ATIR on the basis of Lahore High Court judgment in M/s Sarwar and Company, which was later on upheld by Supreme Court of Pakistan, rejected the claim of exemption. Consequently, the assessment orders were confirmed.
2018 PTD 602 (Trib.)	161, 174(3) & 205	In this case, plea was taken that the order passed under section 161 was barred by time limitation. However, the plea did not find favour from the ATIR which rejected the appeal based on the orders of the Islamabad High Court and Supreme Court of Pakistan.
2018 PTD 1480 (Trib.)	137(2), 140, 153, 161, 205 & 221 of the Income Tax Ordinance, 2001	In this case, the ATIR cancelled the order passed under section 161 on the taxpayer plea that order for the same year was passed, hence another order would be double jeopardy. Further, the taxpayer has already paid tax as per first order. The department contended before the ATIR that the first order was passed without bar code, therefore, it was not a legal order. The department did not dispute the veracity of the first order except that it was without bar code. Department even issued a recovery notice in consequence of first order and demand was recovered through attachment of account. The ATIR observed that the FBR direction about Bar Code was only to avoid harassment. The Circular did not declare any correspondence is 'illegal' if issued without bar-code. The ATIR concluded that where an order has been passed, the same could be rectified under section 221, but no fresh assessment could be made that will be double assessment.
2018 PTD 1533	120, 127 161 & 205 of the	In this case, an appeal was filed by the department against the order passed CIR(A). The department requested for full bench to be constituted. The

CITATION	SECTION(S)	ISSUES INVOLVED
(2018) 117 TAX 115 (Trib.)	Income Tax Ordinance, 2001	request was allowed by the Chairman. Mr. Arshad Siraj, Advocate Supreme Court, was appointed as amicus curiae, to assist the bench. The CIR(A) had cancelled the order passed under section 161/205 on the premise that in the presence of completed assessment order under section 120, order under section 161/205 cannot be passed. The ATIR after details discussion and from the assistance provided by the learned amicus curiae came to the conclusion that order under section 120 is different from the order passed under section 161/205, hence the conclusion arrived at the CIR(A) is not sustainable in the eyes of law. However, on the merits of the case the ATIR held that in order to pass order under section 161/205, transaction failure of the taxpayer must be determined as required under section 161. The matter was remanded back with direction to conduct factual enquiry for identifying the failure envisaged in the provision of section 161.
2018 PTD 1817 (Trib.)	53, 153, 161, 205 [Clause 45A of Part IV of Second Schedule]	In this case, an order under section 161 was passed by the department by holding the taxpayer deducted tax at the rate of 1% under clause 45A of the Part IV of the Second Schedule. The order was confirmed by the CIR(A) in first appeal. The second appeal was filed by taxpayer contending before ATIR that department has itself accepted the status of the person covered under zero rating scheme. The ATIR cancelled that assessment order being contradictory to the accepted position as per sales tax record. The ATIR held that two different position cannot be taken under Sales Tax and Income Tax laws on an issue which is interlinked. The issue regarding deduction of tax on directors' remuneration was sent back to CIR (A) to pass speaking order as per settled principles as laid down by the Superior Courts.
2018 PTD 1913 (Trib.)	60A, 120, 122(1) & 221 of the Income Tax Ordinance, 2001	In this case, the taxpayer challenged the order of CIR(A) who had confirmed that addition on account of depletion allowance. Whereas, on the issue of WWF direction were given to allow consequential relief. The ATIR confirmed the order of CIR(A) in the light of judgements already passed on the depletion allowance.
2018 PTD 2096 (Trib.)	177, 120 & 122(1)(5) of the Income Tax Ordinance, 2001	In this case, difference of opinion arose between the members of the bench. The learned Judicial Member initially allowed the appeal on the point of selection of case in the light of Chen One judgment passed by the Lahore High Court. The learned Accountant Member did not agree with the judicial member and dismissed the appeal in the light of Kohinoor Sugar Mills case. The learned Judicial Member retracted from his initial view in the light of Accountant Member decision. However, on the merits of case accepted the appeal. The learned Accountant Member disagreed with the judicial member on the point that the appeal was only to the extent of selection of case, hence merits cannot be touched upon. The matter was referred to the Chairman. The Hon'ble Chairman held that as per settled law, evidences which goes to the roots of the case can be admitted in appeal. Hence, the Chairman maintained the decision of learned Judicial Member and maintained the order given in the merits of the case.

CITATION	SECTION(S)	ISSUES INVOLVED
(2017) 116 TAX 45 (Trib.) 2018 PTD 1723	4B, 4B(2), 4B(4), 9, 10(a), 10(b), 53(A)	In this case, Super Tax was charged on the Mutual Funds which enjoy exemption from tax under clause (99) of Part I of the Second Schedule. The ATIR accepted the appeal and held that Super Tax is not applicable on Mutual Fund by virtue of exemption under Clause 99.
2018 PTD 1115 (Trib.)	113, 122(5A), 153(1)(b) & 221 of the Income Tax Ordinance, 2001	In this case, the taxpayer did not pay minimum tax with the return of income for tax year 2011. Hence, a show cause notice was issued and based on the reply, minimum tax at the rate of 0.2% was applied giving 80% reduction in tax rate as per SRO 57(I)/2012, dated 24.1.2012. The Additional Commissioner disputed the application of reduced rate and applied the standard rate of 1%. In appeal before the Tribunal learned Accountant Member maintained the order. However, the Judicial Member was of the view that reduced rate shall be applicable. Due to disagreement, referee judge was appointed to decide the issue. The learned third member sided with the Accountant Member and held that reduced rate is not applicable for tax year 2011.
2018 PTD 1199 (Trib.)	60-A, 114 & 122(1)	In this case, the ATIR dismissed the appeal filed by the department against the CIR(A) order. The CIR(A) has ordered that WWF shall be charged on the declared income and not the revised income as per assessment order.
2018 PTD 1344 (Trib.)	100, 122(5-A) & 129 Fifth Schedule	In this case, assessment was made under the Fifth Schedule applicable for exploration company. The departmental view was that each area under a PCA is to be treated as a separate business and has to be computed separately. The Tribunal held that income from exploration and production of petroleum from all PCAs is assessable as one business.
2018 PTD 1406 (Trib.)	122(5A), 111(1)(b) of the Income Tax Ordinance, 2001	In this case, the original assessment order for tax year 2011 was amended under section 122(5A) which was confirmed by Commissioner Inland Revenue (Appeals), however, in further appeal Appellate Tribunal Inland Revenue, was cancelled the assessment order. The department contention was that the taxpayer has not declared correct amount of business capital, hence addition under section 111(1)(b) is warranted. The ATIR has accepted the appeal of taxpayer and held that the members of AOP had duly declared their business assets in the wealth statements. Therefore, orders of both the authorities are vacated and impugned addition is deleted.
2018 PTD 1188 (Trib.)	2(29-C), 153(7)(iv)(a)(b)	In this case, an appeal was filed by the department against the order passed by the CIR(A). The issue was the applicability of definition of “Industrial Undertaking” on AOP firm who import LPG gasses (Propane & Butane) and after process and convert these gasses at high pressure into cylinders with cap seals and label it. Due to this shape of raw material is substantially changed. ADCIR object that AOP is not meeting the criteria of “Industrial Undertaking” on the basis of low electricity and salary bills. ATIR in its detailed order reject the contention of department and upheld the order of CIRA and refer to the facts and relying on a parallel case of Ms. Pyramid Gas (Pvt) Ltd (I.T.A.

CITATION	SECTION(S)	ISSUES INVOLVED
		1130/IB/2016) where judgement said that where if raw material shape changed through a process than it qualified in the definition of Industrial Undertaking. The ATIR confirmed the order of CIRA and allow AOP as "Industrial Undertaking"
2019 PTD (Trib). 598 Muhammad Nazir Ahmed V. The Commissioner Inland Revenue	Section 122C of the Income Tax Ordinance, 2001	In this case, the Appellate Tribunal held that when return of income has been duly filed within the due date then order under section 122C cannot be passed on the basis of provisional assessment. It was held that the assessing officer could only resort to provisions of section 122 of the Income Tax Ordinance, 2001 in the presence of a deemed assessment under section 120. Moreover, it was also held in this case that when a taxpayer is a non-resident, for the purposes of Income Tax, the department should follow the procedure for sending notice(s) as laid down in section 218(2) read with section 172 of the Income Tax Ordinance, 2001.

SYNOPSIS OF IMPORTANT CASE LAWS

INDIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
2018 PTD 1559 – (Supreme Court of Pakistan) – Decided on June 14, 2018	Section 40B of the Sales Tax Act, 1990	In this judgment, the Supreme Court has held that posting of Inland Revenue Officers at the premises of a taxpayer under section 40B of the Sales Tax Act, 1990 to monitor the production and sale of taxable goods and stock positions of a registered person is not intended to be indefinite and could only be for some object, ground or purpose that was legitimately and lawfully within the contemplation of the Sales Tax Act, 1990. The court held as under: "Once the purpose of monitoring had been served or object achieved or the ground stood exhausted , the monitoring must come to an end; it could not be left to the unfettered discretion of the Board , the Chief Commissioner or the Commissioner (as the case may be) to determine when the purpose had been served or object achieved --- Exercise of the power conferred by section 40B was time bound in the sense that some time frame or period must be given in any order made under the section"
2019 119 TAX 175 (Supreme Court)	Section 47	The Collector Central Excise and Sales Tax filed appeal in Supreme Court (SC) of Azad Jammu & Kashmir against the order of the Divisional Bench (DB) of High Court in case of reference fled under Section 47 of the STA, 1990 which was dismissed by the DB of the High Court for having been filed against deceased person. The appeal was dismissed by the SC on the grounds that the Advocate of the Appellant had not submitted any application, along with petition for leave to appeal and even up till the date of decision, for bringing on record the legal heirs of the deceased. It was also held that a party who is not vigilant can only blame himself for the negligence committed by him and not the court.
2019 119 TAX 11 (Supreme Court)	Section 40B	In this case, the respondent was a Company that manufactured aerated waters (soft drinks). Audit of the respondent's operations was carried out by the Department. The Inland Revenue Officers were posted at the Respondent's premises in exercise of powers under Section 45B of STA, 1990 however, no timeframe was set for their posting. The respondent took a number of objections, both as to the constitutionality of S. 40B and also on the legal plane, but none of them found favor with the High Court. However, it was noted in the judgment of High Court that the power was conferred to "monitor" the "production, sale of taxable goods and stock positions". The High Court, quoting from the Oxford Dictionary, observed that to monitor meant "to watch and check something over a period of time and held that the orders for posting of officers under Sec. 40B shall only remain in the field for period of one year from the date of deployment of officers unless revised or recalled by the Authority in accordance with law. This order of High Court was challenged before the Hon'ble Supreme Court (SC) which was dismissed by the SC while affirming the noting of the High Court that the power under s. 40B has been granted to "monitor" the "production, sale of taxable goods and stock positions" of a registered

CITATION	SECTION(S)	ISSUES INVOLVED
		person or class of such persons, by posting Inland Revenue officers at the relevant premises. However, it cannot be left to the unfettered discretion of the Board, the Chief Commissioner or the Commissioner (as the case may be) to determine when the purpose has been served or object achieved. Any such conclusion would run against the grain of the core principles that regulate the exercise of discretionary power. The SC therefore disagreed with counsel's argument that the observations made in the judgment of High Court, require any reconsideration or interference by this Court.
2019 PTD 606 Supreme Court of AJ & K	Section 47	The Azad Jammu and Kashmir (AJK) revenue authorities raised sales tax demand against WAPDA being an electricity generating company for not charging sales tax during the tax periods from January 2000 to October 2000 against supply of electricity generated in AJK to Pakistan. According to WAPDA, such supplies being made from AJK to Pakistan were to be treated as export and therefore not subject to sales tax. The AJK Tribunal through its order directed WAPDA to submit details for verification and determination of sales tax liability against which reference was filed before the High Court of AJK which was dismissed without answering questions of law raised by the petitioner before the court. Being aggrieved, such order of High Court was challenged by WAPDA before the Supreme Court of AJK. The Hon'ble Supreme Court has remanded the matter back to the AJK High Court for attending all the questions of law raised in the reference in compliance of statutory provisions under section 47(5) of the ST Act.
2018 PTD 1042 (Lahore High Court) – Decided on April 2, 2018	Section 21(2) of the Sales Tax Act, 1990 & Rule 12 of the Sales Tax Rules, 2006.	Under Rule 12 of the Sales Tax Rules, 2006, the Commissioner has powers to suspend the registration without prior notice, if he is satisfied that a registered person has issued fake invoices, evaded tax or committed tax fraud. The LHC was of the view that the Term "satisfaction" connoted that there was enough material to form a definite opinion after conducting deep and invasive inquiry by the Commissioner and the word "satisfaction" do not leave anything to imagination that a conclusive opinion had been formed to suspend registration. Conferring of power on the Commissioner under Rule 12 was a clear impairment of the right under Article 18 of the Constitution as the registered person whose registration is suspended is barred from conducting all kind of business for a period of ninety days. In this judgment, the LHC concluded that Rule 12 of the Sales Tax Rules, 2006 to the extent that it provided for suspension of registration of a registered person *without prior notice* is ultra-vires to the Constitution as well as well as the main enactment. The LHC directed that the Commissioner concerned could only proceed to suspend the registration of a registered person *with prior notice* and upon affording an opportunity of hearing. The constitutional petitions were allowed accordingly.
2019 PTD 1534 (Lahore High Court) – Decided on April 3, 2018	Dispute over jurisdiction between FBR and PRA	The petition filed in the LHC challenges the notices issued by the relevant officer of the FBR under section 11 of the Sales Tax Act, 1990. The issue relates to the precise authority of the FBR and the Punjab Revenue Authority (PRA) and the question is as to which of these two authorities will exercise the power to require the petitioner to have itself registered and to pay sales tax. The petitioner pays the provincial sales tax to the PRA. The LHC in its decision held that the tax liability of registered persons in all such cases cannot be made a rolling stone and if a registered person like

CITATION	SECTION(S)	ISSUES INVOLVED
		the petitioner is quite willing to pay the tax, then only one of the authorities can take cognizance of the matter and impose the sales tax. The said imposition of sales tax cannot be permitted to be recovered by both the authorities viz. FBR and PRA. The petition was disposed of with a direction to the FBR to have the matter resolved with the PRA within a reasonable period of time and any further proceedings against the petitioner shall only be continued after such issue has been resolved between the FBR and the PRA.
2019 PTD 257 (Lahore High Court) – Decided on September 26, 2018	Sections 7, 8, 10, 21 & 23 of the Sales Tax Act, 1990	The relevant excerpts of this important judgment are reproduced as under: "The supplies made by the respondent, who is engaged in textile business, were of zero-rating under the S.R.O No. 1125(1)/2011, in the circumstances, the zero-rating facility could not be denied" "Subsequent blacklisting does not invalidate the invoices issued at the time when the supplier was active and duly registered" "Once it is found that the supplier was not blacklisted, there was no justification to deny input tax adjustment against invoices issued by the said supplier"
PTCL 2019 CL. 97 (Lahore High Court)	Sections 7, 8, 10, 21, 23, 33 & 73	In this case, two matters of admissibility of input tax were involved: i) purchases made form black-listed suppliers when they were operative, and; ii) payment made through banking channel during period beyond 180 days. **i. Purchases form Blacklisted Suppliers** The Hon'ble Lahore High Court (LHC) held that input tax cannot be held disallowed as neither the supplier was blacklisted at the time of supply or issuance of invoice, nor the invoices issued have any direct nexus with blacklisting order. While giving this finding, the LHC has placed reliance on another decision of case LHC in case of CIR versus M/s Tariq Poly Pack (Pvt) Ltd (PTCL 2016 CL.449). **ii. Payment made after 180 days** It was held that claim of input tax cannot not be disallowed on basis of delay in payment of more than 180 days when payment has been made through banking channel in compliance of section 73(1). The respondent is only liable for penalty under sub-clause 16 of Section 33 of the ST Act.
PTCL 2019 CL 161 (Lahore High Court)	SRO 1125 (I)/2011, Section 4(c)	In this case, the amendment in SRO 1125(I)/2011 made through SRO 584(I)/2017 whereby amongst other changes, further tax on supplies made to unregistered persons was imposed in respect of supplies covered under SRO 1125 including zero rated supplies. The said amendment was challenged as an unconstitutional on the ground that such amending notification issued by the approval of the 'Federal Minister-in-Charge' under Section 4(c) of the ST Act which previously was power of 'Federal Government' prior to amendment made through Finance Act, 2017. The LHC, while placing reliance on Supreme Court's judgement in case of Mustafa Impex (PTCL 2017 CL. 456) and Sindh High Court's judgement in CP D-7159 whereby section 18(3) of the Customs Act was struck down as unconstitutional, held the amendment in Section 4(c) through Finance Act, 2017, ultra vires of Constitution, and of no legal effect.

CITATION	SECTION(S)	ISSUES INVOLVED
		Resultantly, the amendment made through SRO 584 issued in purported exercise of powers conferred by Section 4(c) was also declared by the Court as ultra vires and of no legal effect and therefore was struck down.
(2019) 119 TAX 309 (SHC)	Section 21	The Govt of Punjab imported laptops for which it entered into a contract with the plaintiff. The goods on imports were to be received by Punjab Higher Education Department (HED) and then handed over to the successful bidder i.e. the plaintiff, which was to take possession of the said goods only for the purpose of delivering them to the respective institutions. The contract contained a clause that Punjab HED would obtain exemption from FBR on GST and advance tax on import, if exemption is not granted then tax shall be borne by the purchaser i.e. Punjab HED. The Plaintiff inadvertently declared himself as the importer in the return. However, plaintiff filed application for revision of return, the approval on which was not granted even after 60 days of the application. The Department without any show-cause notice or opportunity of hearing issued a suspension order under Section 21(1) of the 1990 Act read with Rule 2 1 (a)(i) of the Sales Tax Rules, 2006. The effect of this suspension order was that the Sales Tax Registration of the plaintiff was suspended w.e.f. October 17, 2017 and the plaintiff was being treated as non-active taxpayer. Simultaneously a show-cause notice was also issued to the plaintiff under Section 21(2) of the 1990 Act read with Rule 12(a)(i) and Rule 12A of the 2006 Rules as to why they should not be blacklisted. The plaintiff filed suit and challenged the SCN and Suspension order. The plaintiff contended that the tax Department failed to consider the actual implementation of the contract whereby the Punjab HED is the actual importer. The plaintiff made submissions that the airway bills and goods declarations categorically point out the Punjab HED as the actual owner, buyer and importer of the laptops, whereas, the tax Department misunderstood that Plaintiff was the importer of laptops. Therefore, the Department cannot rely on the original return submitted under some misunderstanding. FBR confirmed tax exemption but questioned plaintiff in default and lodging tax fraud proceedings. It was noted by the SHC that the word 'satisfied' requires stronger mind for action than mere suspicion and the discretion conferred upon Commissioner to pass suspension order even without prior notice ought to have been exercised with rationality and due diligence which means the existence of mental persuasion much higher than mere opinion, hence, the suspension order passed by CIR was set aside and it was ordered that proceedings regarding blacklisting may continue after providing opportunity of being heard to the Plaintiff.
(2019) 119 TAX 106 (LHC)	ST Special Procedures	In this case, petition was filed in respect of amendments made provisos inserted vide SRO 421 of 2014 to rule 58H, 58Ha, 58Hb and 58MC of Chapter XI of the Sales Tax Special Procedure Rules, 2007 and para 3 of STGO No. 01 of 2013 dated January 03, 2013 whereby special rate procedure was made applicable for only those manufacturers of steel that used public sector energy supply while other manufacturers were excluded from benefit of said special rate/procedure.

CITATION	SECTION(S)	ISSUES INVOLVED
		The petitioner company argued that the amendments made is discriminatory as it created two different classes of persons on the basis of source of energy used by such persons both making same taxable supplies. A yardstick for making distinction for levying different rates of tax was never considered that made it unfavorable for petitioner Company to avail the tax benefits that others were getting from production of the same nature products. It was concluded that: i. *The words "excluding units operated by sugar mills or other persons using self-generated electricity" in rule 58H, proviso to rule 58H, rule 58Hb (as amended by SRO 421) of Rules, 2007 are without lawful authority and of no legal effect and are struck down.* ii. *Clause 3 of Sales Tax General Order No.1 of 2013 dated 03.01.2013 is ultra vires and is struck down, too.*
2018 PTD 1574 [High Court (AJ&K)] – Decided on May 22, 2018	Section 33 & 34 of the Sales Tax Act, 1990	In this judgment, the High Court held as under: "Before imposition of penalty under Ss. 33 & 34 of the Sales Tax Act, 1990; the department must be satisfied that defaulting party/taxpayer acted deliberately in defiance of the law or was guilty of contumacious or dishonest conduct or acted in conscious discharged of its obligations – Penalty should not be merely imposed because the officer was competent to impose the same and discretion of concerned officer of department should be exercised judiciously and after consideration of all the relevant circumstances"
2018 PTD 2121 (Peshawar High Court) Decided on June 5, 2018	Sections 3, 13, 8, 2(4), 2(37) & Sixth Schedule of the Sales Tax Act, 1990 & Sales Tax Special Procedure (Withholding) Rules, 2007	Question before the High Court related to the applicability of sales tax upon printing and supply of books to provincial Textbook Board and whether it was required to withhold sales tax in such transactions. The High Court held as under: "When a manufacture made supply of goods which were exempt from sales tax under section 13 of the Sales Tax Act, 1990, then such manufacturer was not required to pay sales tax at the time of supply of goods as said exemption would take such supply outside the regime of "taxable supply" which was condition precedent for invoking section 3 of the Sales Tax Act, 1990. In the present case , printing and supply of textbooks to Textbook Board pursuant to an agreement would constitute a taxable activity however, the same could not be termed as taxable supply per section 2(24) of the Sales Tax Act, 1990 ---- Textbook Board was not required to withhold sales tax on such transactions as under Rule 2 of the Sales Tax Special Procedure (Withholding) Rules, 2007; withholding of sales tax was only required when withholding agent was making payment against taxable goods and supply of books was exempt from levy of sales tax under Entry 21 of the Sixth Schedule to the Sales Tax Act, 1990" "High Court observed that printing of books fell within the definition of "manufacturing" under Sales Tax Act, 1990 and was therefore not a service rendered under the said Act and thus, claim of input tax could not be made by a person on goods that were used in making supplies exempt from sales tax ------Constitutional petition was disposed of, accordingly"

CITATION	SECTION(S)	ISSUES INVOLVED
2019 PTD 594 Lahore High Court	Section 45A	In this case, the Department filed reference before the High Court against the order of Tribunal whereby the Hon'ble Appellate Tribunal IR adjudicated that the Commissioner cannot delegate its powers of recalling for records under section 45A(4) of the ST Act to its subordinate officers which was challenged by the Department before the LHC. It has been held by the Court that in terms of section 45A of the ST Act, the Commissioner alone has the power to exercise jurisdiction to call for an order or examine the legality of an order passed by an officer subordinate to him which cannot further be shared or delegated to any subordinate officer. In the absence of any power or authority to further delegate any revisional or supervisory jurisdiction, such jurisdiction had to be exclusively exercised while adhering to the principles encapsulated in the maxim *"Delegatus non potest delegare"*.
2019 PTD 257 Lahore High Court	Sections 73, 3, 8A and 7	This case mainly relates to disallowance of input tax pertaining to the invoices issued by suspended/ blacklisted taxpayers which were found active and operative at the time of issuance of tax invoices. It was held by the Hon'ble High Court that subsequent black listing does not invalidate the invoices issued at the time when the supplier was active and duly registered. While giving such views, the LHC placed reliance on the judgments reported as 2015 PTD 2256 2016 PTD 467 and 2014 PTD 1530.
2019 PTD 389 Sindh High Court Youngs (Private) Limited and others V. Province of Sindh and others	Section 2(72C) of Sindh Sales Tax on Services Act, 2011	In this case various Petitions were filed before the Hon'ble High Court of Sindh Challenging therein the levy of Sindh Sales Tax at the rate of 6% on renting of immoveable property services in terms of section 2(72C) read with Tariff Heading 9806.3000 of the Sindh Sales Tax on Services Act, 2011. Learned counsel for the Petitioners after arguing their case in great length prayed that section 2(72C) read with Tariff Heading 9806.3000 of the Sindh Sales Tax on Services Act, 2011 be declared ultra-vires the constitution and in the alternate that provisions of section 2(72C) read with Tariff Heading 9806.3000 may be read down and interpreted to mean that renting of immoveable property itself is not a taxable service under the Act. The Hon'ble High Court after examining the definition of the phrase 'taxable service' observed that the term service' refers and relates to performance of an act by any person for the benefit of another person either for consideration or otherwise. The Hon'ble court then examined section 2(72C) as well as Tariff Heading 9806.3000 in view of the above definition of service. Moreover, the court observed that in order to bring such activity or service as defend in section 2(72C), within the tax net, examination of section 3 and section 4 of Act was critical. Subsequently while considering section 4 of the Act, the Court held that supply of 'immoveable property' by way of lease, license or similar arrangement has been excluded by the legislature from the purview of the definition of the term 'economic activity', therefore such activity cannot be treated as a taxable service under section 3 of the Act. Petitioners therefore, were accepted as prayed.
(2018) 118 TAX 187 (Trib) – Decided on April 10, 2018	Section 48 of the Sales Tax Act, 1990	In this decision, the Tribunal held that the direction given by the Commissioner Inland Revenue – Appeals (CIRA) to deposit 10% of the outstanding tax demand was outside the domain of powers of CIRA. The Tribunal concluded that the Commissioner had inherent, ancillary and implied powers to grant the stay till the decision or disposal of appeal but the said power had not been exercised by him and instead he directed the taxpayer to deposit 10% of the outstanding amount using stereo typed stock phrases and in slipshod manner without recording any appropriate figure and findings. The Tribunal directed the CIRA either to release/issue and

CITATION	SECTION(S)	ISSUES INVOLVED
		serve appellate order within 30 days from the receipt of present order or grant unconditional stay till the disposal of decision of the main appeal.
2019 PTD 1166 (Trib) – Decided on May 10, 2018	Section 7, 11, 25, 33, 34 of the Sales Tax Act, 1990 & SRO No. 490/2004 June 12, 2004	In this decision, the Tribunal has discussed the matter of delegation of powers of the Commissioner and admissibility of input tax. The relevant excerpts are reproduced as under: "Delegetee cannot further delegate his powers, only the Commissioner is competent and empowered to undertake the assessment proceedings under section 11 of the Sales Tax Act, 1990 and not by any other officer. The show-cause notice issued under section 11 by the officer is of no legal effect . The DCIR and/or Additional Commissioner is not empowered to issue notice and passed the order. Such powers exclusively vests with the Commissioner" "With regards to merits, the action of the authorities below is even otherwise not lawful as the impugned input tax was otherwise related to the taxable activity or related to taxable supplies. The subject items on which input tax was claimed is allowable under section 7, and none of the input tax was unrelated to taxable activity /supplies. Notwithstanding the legality and constitutional validity of SRO 490 or its subsequent amendments vide SRO 450 or amendments through the Finance Act, 2017, the items on which input tax was claimed otherwise does not fall in the negative list of SRO 490 (as amended by SRO 450). The electrical fitting, pipes, wire, cables etc. were those directly used in taxable activity; thus falling outside the ambit of SRO 490/450"
2019 PTD 939 (Trib) – Decided on May 16, 2018	Section 11, 25, 37 & 38 of the Sales Tax Act, 1990.	In this judgment, the Tribunal has held that subsequent blacklisting of supplier cannot deprive the purchaser from the input tax paid by him when the supplier was active. The relevant excerpts are reproduced as under: "Now it is well-settled that subsequent blacklisting of supplier could not be made a tool to deprive the registered person of a valuable right accrued in his favour for purchases or transactions made prior to the suspension of registration of such supplier. Having taking regard to the facts of the case in its entirely and after respectfully following the ratio settled in the referred judgments cited supra, we have no option except to reach the conclusion that revenue has failed to prove the allegation levelled against respondent that they claimed inadmissible input tax adjustment on the basis of invoices issued by their suppliers which were blacklisted subsequent to the transactions made by the respondent. In this view of the matter the orders of the authorities below are vacated on merit too and the appeal of the taxpayer is hereby allowed"
2019 PTD 1836 (Trib.) – Decided on June 12, 2019	S.R.O 1125(1)/2011 dated December 31, 2011	As per the judgment, the taxpayer was a sole propriety textile garment retailer who was audited and vide order-in-original was ordered to pay penalty and surcharge for short paid tax. Appellate authorities set aside the order-in-original and declared that Notification S.R.O No. 1125(1)2011 dated December 31, 2011 did not apply to the case of taxpayer. The Tribunal upheld the findings of the appellate authorities and held as under: "Businesses that were exclusively engaged in retail sales were by intent and design both, and most explicitly excluded from application of notification S.R.O No. 1125(1)/2011 dated December 31, 2011 and Federal Board of Revenue had issued clarifications from time to time as to non-applicability of said SROs to retailers ----Only those retailers fell within scope of such SROs who were manufacturers-cum-retailers and there were clarifications to that effect also issued from time to time by Federal Board of Revenue"

CITATION	SECTION(S)	ISSUES INVOLVED
2019 PTD 1024 (Trib.) – Decided on August 3, 2018	Section 3 of the Sales Tax Act, 1990	In this decision, the Tribunal held that an enactment reducing the Sales Tax rate from 17% to 16% cannot be applied retrospectively. The Tribunal held as under: "Claim of taxpayer that reduction in rate of sales tax was available with retrospective effect as beneficial to them, was wrong and baseless---Indirect tax like sales tax was applicable on each and every transaction separately and once a transaction was completed and its effect transferred to final consumer/general public, it became past and closed transaction, which could not be amended or corrected by assuming retrospective effect of a beneficial notification or executive order"
2019 PTD 144 (Trib.) – Decided on August 27, 2018	Section 2(35), 3 and 11 of the Sales Tax Act, 1990.	In this decision, the Tribunal has concluded that the tax department cannot conclude merely on the basis of consumption of electricity units that the registered person has suppressed production. The relevant excerpts of the judgment are as under: "Consumption of electricity units might have any nexus with that of production of goods and any correlation in between could have been made, but no direct relationship could be established in electricity with that of sales and supply of taxable goods – Both the variables being completely independent to each other, no functional relationship could be established" "Assessment of sales tax on the basis of consumption of electricity units was not a safe rule and yard-stick to assess the production---Unless the department was in a position to prove that the assessee did more production and the same has been transferred to another party, sales tax could not be charged"
2019 PTD 176 (Trib.) – Decided on August 27, 2018	Section 73 of the Sales Tax Act, 1990.	As per this decision, the taxpayer allegedly claimed input tax in violation of provisions of section 73 of the Sales Tax Act, 1990 by making late payment to its suppliers beyond specified period of 180 days from the date of issuance of tax invoice. The Tribunal favored the taxpayer by holding as under: "In the present case, no revenue loss was involved particularly when the particular supplier had already paid output tax in the relevant tax periods. Refund of input tax was substantive right of the assessee, which could not be taken away or withheld on mere technicalities or procedural lapses"
2019 119 TAX 38 (Trib)	Sections 2(37), 14, 21(2), 38 & 46	The Appellant being duly registered under Section 14 of STA, 1990, filed appeal before Tribunal against the order for black listing passed by the Commissioner on the allegations of fake invoices and undisclosed business place. Prior to this, the Appellant had already challenged the suspension order before the High Court which had given directions to decide the matter while considering the replies submitted and the decisions of SHC in case of Appel Paper Products (Pvt) Ltd. It was contended by the Appellant that before passing such order, neither any adverse material was placed on record regarding tax fraud, nor any evidences were submitted against the allegations and that the directions of the SHC have not been followed. The summary points of the decision given by the Tribunal is given as under: • No adverse material/evidence placed on record to establish criminal charge of issuance of fake invoices or committing tax fraud • Party making allegation must bring material evidence to prove same - Action based upon no evidence is not permitted under the law

CITATION	SECTION(S)	ISSUES INVOLVED
		• Order of blacklisting is without legs, sticky, slipshod and devoid of valid reasons • Initial burden of proof lies on Deptt. to establish criminal offence of tax fraud - There is no room for any intendment in fiscal matters • Non-declaration or late declaration of a new business premises by registered person cannot be considered as tax fraud • Proceedings and order of suspension or blacklisting should be passed after full personal verification by Commissioner himself that tax fraud is established on registered person with documentary evidence • Actions of suspension and subsequent actions thereon held to be illegal, void ab initio and nullity in the eyes of law Accordingly, it was held that the SCNs on suspension and subsequent blacklisting were issued without lawful authority and are illegal and unlawful. The appeal was decided in favor of taxpayer, the order of blacklisting was set aside and registration was restored.
2019 119 TAX 61 (Trib)	Sections 3(7), 6, 7,11, 11(2), 11(4), 34 & 35(5)	In this case, the taxpayer challenged recovery by CIR under Section 11(4) to taxpayer being an exporter liable to withhold sales tax but didn't deduct and deposit the full amount of withholding sales tax on purchases from unregistered persons during the period from December 2013 to January 2015. Order was passed for recovery of short paid amount of withholding taxes in its sales tax returns. It was contended by the counsellor of the Appellant that default of withholding tax cannot be levied u/s 11(2) of the Act and that SCN was issued by ACIR while the order was passed by the OIR whereas a judicial order can only be passed by the same judicial authority who issued the SCN. It is also against the spirit of section 17 and 18 of the General Clauses Act, 1897. It was also argued that the prior to Finance Act, 2016 section 11 did not cover within its scope the recovery of short recovered /deposited sales taxes withheld and to cope with such like situation, section 4A was inserted vide Finance Act, 2016. On the other hand, the D.R. strongly opposed the contention made by the learned counsel for the taxpayer and supported the order passed by the CIR(A) pleading it to be legal, lawful and within the framework of law. It was held by the Tribunal that sub-section (4A) of Section 11 of the Act was inserted through Finance Act, 2016 having no retrospective effect accordingly, not applicable to the tax period involved in this case of December 2013 to January 2015. Appeal decided in favor of the taxpayer.
2019 PTD (Trib) 459 Appellate Tribunal Inland Revenue (Peshawar)	Sections 3,7,8,22,23,26,34,36 [and SRO 896(I)/2013	The taxpayer being importer of used auto parts contended that charging of extra tax in terms of SRO 896 of 2013, is not applicable on supplies of used / old Auto Parts and Accessories which are distinct item form 'auto parts' in terms of Customs valuation Ruling. It was argued that the 'auto parts' classifiable under PCT 8708.9990 are covered under the scope of Chapter XIII of the Sales Tax Special Procedure

CITATION	SECTION(S)	ISSUES INVOLVED
	dated October 04, 2013]	Rules, 2007 whereas the imports made by the Appellant Company of used auto parts under PCT 8407.3400 are not covered under scope of above Chapter XIII and therefore are not subject to Extra tax. The Hon'ble Tribunal upheld the findings of CIRA on the premise that under S.No 4 of the Table provided in Chapter XIII, the words 'Auto parts and Accessories have been used without any bifurcation into new or old parts, hence, levy of extra tax applies on supplies of both categories of auto parts and accessories either they are new or in used/old condition.
2019 PTD (TRIB) 263 M/s. Allied Bank Ltd. Versus Assistant Commissioner SRB	Section 23 of the Sindh Sales Tax on Services Act, 2011 [and Rule 30 of the Sindh Sales Tax on Services Rules, 2011]	In this case an Order in Original was passed by the learned Assistant Commissioner, SRB against the appellant, wherein three services, 'Bancassurance', 'rebate received from foreign banks' and 'rebate from Bank of Pakistan' were held to be liable to Sindh Sales Tax at the rate of 16% under the provisions of Section 8 read with tariff heading 9813.4000 and its sub-headings thereof. The appellant failed in its appeal before the Commissioner (Appeals, SRB) and therefore preferred an appeal before the Appellate Tribunal, SRB. The learned AR of the appellant submitted that none of the aforesaid services were enumerated in the Second Schedule and that the learned AC has misdirected itself by wrongly applying subheadings in the impugned order in original. The learned AR heavily relied on judgment of the Sindh High Court reported as 2014 PTD 284 (Citi Bank's case). He further argued on merits of each service and contended that the services in question are not chargeable to tax under the Act, therefore the question of claiming of exemption does not arise. The learned AC, appearing on behalf of the respondent submitted inter alia that the main heading 98.13 of Second Schedule covers all services provided by banking companies and that some services were taxable under sub-heading 9813.4990 (other services not specified elsewhere). The learned Appellate Tribunal, SRB agreed with the contentions raised by the learned AR of the appellant and observed that only such services rendered by the appellant that fall under the tax net which are enumerated under tariff heading 98.13 and its sub-headings and sub-headings and thus chargeable to Sales Tax. The learned Tribunal further held that the judgment of the Hon'ble High Court of Sindh in the case of Citi Bank NA is on all four corners applicable to the case of the appellant. Therefore, consequently appeal of the taxpayer was allowed and the impugned order in original as well as order-in-appeal was set aside.

SUMMARY OF IMPORTANT NOTIFICATIONS ISSUED BY FEDERAL TAX AUTHORITIES

FEDERAL EXCISE SRO NOTIFICATIONS

CIRCULAR/ NOTIFICATION/ SRO REFERENCE	SUBJECT
SRO 1268(I)/2018 dated October 16, 2018	Through SRO 1150(I)/2018 dated September 18, 2018, Fixed Rates of FED was levied with immediate effect. Through SRO 1268 of 2018, the Board rescinded the aforesaid SRO whereby such fixed rate FED was levied and simultaneously transposed the same into Table –I of the First Schedule to the FE Act through the Finance Supplementary (Amendment) Act, 2018.
SRO 371(I)/2019 dated March 15, 2019	As per Rule 33(2)(c) of the FE Act, 2005, duty drawback is not applicable in case where the excisable goods in retail packing are exported without having the codes specified by the Board printed in bold on packing. Through SRO 371 of 2019, a proviso has been inserted in Rules 33 whereby in case of export of cigarettes where importing countries have different pack printing requirements, then Board may remove requirements of printing the specified code on such products whereon drawback of duty is claimed with a condition that product is particularly identifiable as not to be sold in Pakistan.

DIRECT TAX SRO NOTIFICATIONS

NOTIFICATION S.R.O. REFERENCE	SUBJECT
SRO No. 272(I)/2018 dated March 1, 2018	Amendment in registration rules with respect to registration of foreign Government
SRO No. 279(I)/2018 dated March 5, 2018	Amendment in Chapter XII of the Income Tax Rules, 2002
SRO No. 880(I)/2018 dated July 13, 2018	Draft Income Tax Return Forms and Wealth Statement for individuals and AOPs for tax year 2018
SRO No. 887(I)/2018 dated July 23, 2018	Amendment in Second Schedule of Income Tax Ordinance
SRO No. 1012 (I)/2018 dated August 17, 2018	Electronic Return for Individuals and AOPs and Paper Return for Individuals for Tax Year 2018
SRO No. 1091(I)/2018 dated September 4, 2018	Draft - Electronic Return for Companies for Tax Year 2018

NOTIFICATION S.R.O. REFERENCE	SUBJECT
SRO No. 1165(I)/2018 dated Setpmebr 28, 2018	Amendment in Chapter VIIIA of Income Tax Rules, 2002
SRO No. 1213(I)/2018 dated October 5, 2018	Exemption from extension of Federal Taxes to erstwhile FATA/PATA
SRO No. 1226(I)/2018 dated October 8, 2018	Regarding values of minerals for the purpose of Sub-Section (4) of Section 236V of the Income Tax Ordinance, 2001
SRO No. 1305(I)/2018 dated October 30, 2018	Amendment in Chapter VIIIA of Income Tax Rules, 2002
SRO No. 1321(I)/2018 dated November 2, 2018	Draft of further amendments in Chapter VIII of Income Tax Rules, 2002
SRO No. 1352(I)/2018 dated November 6, 2018	Draft amendments in Rule 231C of Income Tax Rules, 2002 on Alternative Dispute Resolution
SRO No. 1357(I)/2018 dated November 9, 2018	Electronic Return for Companies for Tax Year 2018
SRO No. 29(I)/2019 dated January 8, 2019	Amendment in Income Tax Rules, 2002 for furnishing information by Banks
SRO No. 69(I)/2019 dated January 24, 2019	Amendment in rule 231 C on Alternate Dispute Resolution
SRO No. 112(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Bahawalpur
SRO No. 111(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Abbottabad
SRO No. 113(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Faisalabad
SRO No. 114(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Gujranwala
SRO No. 115(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Gujrat
SRO No. 116(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Hyderabad
SRO No. 117(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Islamabad
SRO No. 118(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Jhang

NOTIFICATION S.R.O. REFERENCE	SUBJECT
SRO No. 119(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Jhelum
SRO No. 120(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Karachi
SRO No. 121(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Lahore
SRO No. 122(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Mardan
SRO No. 123(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Multan
SRO No. 124(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Peshawar
SRO No. 125(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Quetta
SRO No. 127(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Sahiwal
SRO No. 128(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Sargodha
SRO No. 129(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Sialkot
SRO No. 130(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Sukkur
SRO No. 115(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Gujrat
SRO No. 118(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Jhang
SRO No. 126(I)/2019 dated February 1, 2019	Revision of Value of Immovable Properties of Rawalpindi
SRO No. 326(I)/2019 dated March 11, 2019	Notification of Benami Transactions (Prohibition) Rules, 2019

SUMMARY OF IMPORTANT NOTIFICATIONS ISSUED BY FEDERAL TAX AUTHORITIES

INDIRECT TAX SRO NOTIFICATIONS

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
S.R.O 781(1)/2018 dated June 21, 2018	IT Services and IT-Enabled Services were brought in to the tax net under the Islamabad Capital Territory (Tax on Services) Ordinance, 2001 at the rate of 5%.
S.R.O 780(1)/2018 dated June 21, 2018	Supplies of foam and spring mattresses and other foam products for household use has been excluded from the levy of Further Tax at the rate of 3% which is applicable on supplies made to unregistered persons.

S.R.O 779(1)/2018 dated June 21, 2018	Rescission of the following S.R.Os:
	
	i) S.R.O 499(1)/2016 dated July 27, 2016;
	ii) S.R.O 721(1)/2016 dated August 8, 2016;
	iii) S.R.O 42(1)/2017 dated January 26, 2017;
	iv) S.R.O 139(1)/2017 dated March 6, 2017;
	v) S.R.O 47(1)/2018 dated January 23, 2018

S.R.O 777(1)/2018 dated June 21, 2018	Amendments made in the S.R.O No. 1125(1)/2011 dated December 31, 2011 relating to five export-oriented sectors, whereunder the rate of sales tax has been enhanced from 6% to 9% with certain conditions.
S.R.O 775(1)/2018 dated June 21, 2018	Certain amendments were made in Rule 58B, 58H, 58I, 58K and 58S of the Sales Tax Special Procedure Rules, 2007 which relate to the rules prescribed for importers, steel melters and specified electronic home appliances.
S.R.O 890(1)/2018 dated July 23, 2018	Exemption from sales tax on goods supplied by industrial units located in certain tribal areas (erstwhile FATA/PATA) subject to the condition that industrial production and supply of goods has been commenced on or before May 31, 2018.
S.R.O 889(1)/2018 dated July 23, 2018	Exemption from sales tax on goods supplied by retailers located in certain tribal areas (erstwhile FATA/PATA).
S.R.O 888(1)/2018 dated July 23, 2018	Exemption from sales tax including extra tax on supply of electricity to domestic, commercial and industrial consumers including retailers of certain tribal areas (erstwhile FATA/PATA).
S.R.O 996(1)/2018 dated August 11, 2018	Amendment in S.R.O 1125(1)/2011 dated December 31, 2011 whereby sales tax zero-rating has been allowed on import of machinery, not manufactured locally, if imported by textile industrial units, subject to certain conditions.
C. No. 5/93-STB/2018/89721-R dated July 23, 2018	FBR's comments on Sales Tax and Federal Excise Duty measures introduced through the Finance Act, 2018 and budgetary SROs.
SRO 1212(I)/2018 dated October 05, 2018	Exemption on supplies made to FATA and PATA has been fully restored with retrospective effect since the date when the Constitution (Twenty-fifth Amendment) Act, 2018 was assented by the President i.e., May 31, 2018

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
	Earlier notifications for exemption on supply made to FATA and PATA i.e. Notifications No. SRO 888(I)/2018, SRO 889(I)/2018 and SRO 890 all dated July 23, 2018, which could not completely restore the exemptions available prior to above amendment in the Constitution, have been rescinded through this notification. This exemption will be effective up to June 30, 2023
SRO 1267(I)/2018 dated October 16, 2018	SRO 488(I)/2004 dated June 12, 2004 provides for restriction on adjustment of input tax against output tax charged on supply of certain items made to unregistered persons.
SRO 32(I)/2019 dated January 09, 2019	Through the SRO's mentioned in column 1 dated October 16, 2018 and January 19, 2019, the following changes have been made in the list of items specified in SRO 488 of 2004 with effect from October 17, 2018: • Omitted item "Sugar (supply to wholesalers and dealers) • Inserted item "unmanufactured tobacco" • Inserted item "Molasses falling under PCT heading 1703.1000"
SRO 1301(I)/2018 dated October 29, 2018	The Board has specified functions of the Directorate General, Intelligence and Investigation-IR (I&I) and for vesting equivalent powers and jurisdictions of Chief Commissioner, Commissioner, Additional Commissioner, Deputy/Assistant Commissioner Inland Revenue conferred under section 25A, 26(3), 32, 37A, 37B, 38, 38A, 38B and 40 of the Sales Tax Act, 1990, to the respective I&I officers. This notification has been issued in supersession of SRO 116(I)/2015 dated February 09, 2015
SRO 1302(I)/2018 dated October 29, 2018	The Federal Board of Revenue has posted Director General, Directors, Additional Directors, Deputy Directors and Assistant Directors in the Directorate General of Intelligence and Investigation Inland Revenue under Section 30A of the ST Act. The notification contains list of officers' names, designations and supervising authority and sub-ordinates thereof.
SRO 213(I)/2019 dated February 11, 2019 (amending SRO 1302(I)/2018)	Through SRO 213 of February 2019 the list of officers' names and designations in SRO1302 has been enhanced.
SRO 1308(I)/2018 dated October 31, 2018	Revision in Sales Tax Rates of the following Petroleum products due to change in prices: 1. Motor spirit excluding HOBC 2. High speed diesel oil 3. Kerosene 4. Light diesel oil
SRO 1461(I)/2018 dated November 30, 2018	
SRO 1574(I)/2018 dated December 31, 2018	
SRO 1320(I)/2018 dated November 02, 2018	Changes made in the Sales Tax Rules, 2006 as under: i) Second proviso of Rule 26A and Second proviso of Rule 36

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
	ii) The powers of Commissioner under above provisos to conduct Computerized Post-Refund Scrutiny (PRS) for refunds processed/ sanctioned after June 30, 2014 has been replaced with Manual Post-refund Scrutiny (PRS)
SRO 1360(I)/2018 dated November 12, 2018 SRO 180(I)/2019 dated February 04, 2019	New Chapter XIV-AA 'Online Integration of Leather and Textile Sectors', has been inserted after Rule 150ZE of the Sales Tax Rules, 2006 containing rules regarding conditions and obligations for claiming reduced rating under SRO 1125 of 2011 on sales of textile and leather articles through retail outlets. Further amendments made in the said rules whereby: • The benefits of reduced rate of sales tax shall not be available to registered persons whose sales are not recorded by a point of sale and communicated to FBR's computerized system • Requirement of Stock's summary report to FBR on daily/ weekly or monthly basis were withdrawn • Omission of requirement to produce client's details on invoices in case of payment made via credit card • Requirement of records of CCTV decreased from 3 month to 1 month • Point of Sale also includes sales made through websites and social media
SRO 110(I)/2019 dated January 31, 2019	Changes made in SRO 1125(I)/2011 with effect from February 01, 2019 till June 30, 2019 to extend the benefits of reduce rating for imports of raw and ginned cotton stages and onwards which was previously available only for local supplies spinning stage onwards
SRO 250(I)/2019 dated February 26, 2019	Changes made in the Sales Tax Rules, 2006 as under: • Insertion of new Chapter XIV-B wherein complete SOP for Electronic Monitoring, Tracking and Tracing of the following Specified Goods and Licensing therefor, has been established: i. Tobacco products ii. Beverages iii. Sugar iv. Fertilizer and v. Cement
SRO 253(I)/2019 dated February 26, 2019	Changes made in the Sales Tax (Special Procedures) Rules, 2007 with retrospective effect from July 01, 2018 are as under: Earlier in 2015 the Federal Government had inserted Chapter XV for sales tax implications on Cottonseed Oil Expelled by Oil Expelling Mills and Composite Units of Ginning and Expelling through SRO188(I)/2015 dated March 05, 2015 with sales tax applicable at Rs.6 per 40 kg of cottonseed. However, the said notification was declared *ultra vires* by the Lahore High Court which was upheld by Supreme Court of Pakistan vide its order dated April 16, 2018 on the ground that the approval of the Federal Cabinet was not obtained. Through this SRO, the Federal Government has re-issued the same special procedures with retrospective changes of sales tax at Rs.7 per 40 kg for the periods July 2018-19 and Rs.8 per 40 kg for the onward period from July 01, 2019.

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
SRO 328(I)/2019 dated March 11, 2019	Changes made in the Sales Tax Special Procedure (Withholding) Rules, 2007 with effect from March 12, 2019 are as under: • The registered buyers of Cane Molasses are exclusively required to withhold or deduct Sales Tax if such purchases made from unregistered suppliers on the basis of gross value • The withholding agents shall not entitled to claim input tax of such withholding of tax

SUMMARY OF IMPORTANT NOTIFICATIONS ISSUED BY PROVINCIAL SALES TAX AUTHORITIES

(SINDH REVENUE BOARD)

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
SRB-3-4/9/2018 dated May 16, 2018	The benefits of reduced rate Notification No. SRB-3-4/8-2013 dated July 1, 2013 shall not apply on the following: "Persons receiving or procuring services (from a non-resident service provider based in a country outside Pakistan) and/or the persons providing or rendering the 'Franchise Services' or 'Intellectual Property Services' who elect or opt to pay the statutory rate of tax at 13 percent under the special procedures prescribed by the Board and avail the input tax credit/adjustment facility"
SRB-3-4/10/2018 dated May 16, 2018	Procedure prescribed in the Sindh Sales Tax on Services Rules, 2011 for exercising an option by the providers of Franchise Services and Intellectual Property Services to pay sales tax at the standard rate of 13%.
SRB-3-4/12/2018 dated June 20, 2018	Extension in due date uptill June 30, 2018 for availing the Amnesty scheme announced by the Sindh Revenue Board vide notification No. SRB-3-4/11-2018 dated May 18, 2018.
SRB-3-4/13/2018 dated July 9, 2018	Allocation of sector-wise jurisdiction of the Commissioners of the Sindh Revenue Board.
SRB-3-4/16/2018 dated September 11, 2018	Exemption of the following services provided or rendered by registered persons in relation to the donations and contributions made for the "Supreme Court of Pakistan - Diamer Bhasha and Mohmand Dams – Fund": i) Advertisement services, ii) Advertisement agents; iii) Telecommunication Services; iv) Banking Services

(PUNJAB REVENUE AUTHORITY)

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
Circular No. 1 & 2 of 2017 dated April 11, 2018	Allowing manual entry for claiming input tax under STRIVE till June 30, 2018.
PRA/Orders.06/2012/1028 dated June 11, 2018	Payment date and return filing date were extended till June 20, 2018 and June 22, 2018 respectively for filing of Punjab sales tax return with the PRA.

(KPK REVENUE AUTHORITY)

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
KPRA/4N/2018 dated May 3, 2018	Through this notification, it has been prescribed that the liability to pay sales tax on 'Ride Hailing Services' shall be upon the company/AOP/individual providing 'digital platform' for connecting the passengers with taxi drivers.
KPRA-506-15/2018 dated August 31, 2018	Prescribing reduced rate of sales tax at the rate of 1% on construction services provided to hydropower projects executed in the province of KPK.

(BALUCHISTAN REVENUE AUTHORITY)

CIRCULAR/ NOTIFICATION S.R.O. REFERENCE	SUBJECT
BRA/BSTS/05/2018 dated June 27, 2018	Through this notification, Balochistan Sales Tax on Services Rules, 2018 have been prescribed.
BRA/BSTW/06/2018 dated June 27, 2018	Through this notification, Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018 have been prescribed.