ITBAK's News & Views

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A publication of the Income Tax Bar Association, Karachi covering information on recent important judicial pronouncements, circulars and clarifications

Contents

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IMPORTANT CIRCULARS AND NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
		INCOME TAX	
Circular No.5 of 2005	27.07.2005	Clarified that reduced rates of withholding tax @ 1% on Ships imported for Dismantling under clause (13) of Part-II of the Second Schedule will be available in respect of Bills of Entry presented on July 01, 2005 and/or thereafter.	**215**
Circular No.6 of 2005	19.08.2005	Amended S.133 of Income Tax Ordinance provides for filing of Direct Reference to High Court instead of hitherto through Tribunal. It is clarified that the new procedure of direct reference shall be applicable to all applications preferred to High Court from July 01, 2005 onwards.	**216**
Circular No.1(10)ITR/2005	27.07.2005	Keeping in view of hardship faced by the Withholding Agents, Quarterly Statements for the quarter ended on 30.06.2005 were to be accepted on old formats upto extended date of 30.07.2005 instead of on new prescribed format notified under SRO 641(I)/2005 dated 20.07.2005	**217**
Circular No.4(51)ITP/2002	27.09.2005	Clarified that where a salaried taxpayer is required to file a certificate in lieu of return and his last declared or assessed income is Rs.500,000/- or more, will have to furnish a wealth statement alongwith such certificate or statement, as the case may be, for that tax year.	**218**
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Circular No.4(71)ITP/2002	07.10.2005	Clarification regarding applicability of rate of tax on Exports and Indirect Exports from EPZA and by a person registered under DTRE Rules.	**220**
Circular No.1(10)ITP/2005	15.10.2005	Due date of 15.10.2005 for filing of newly prescribed Quarterly Statements under SRO 641 dated 27.06.2005 for period ending on 30.09.2005 extended upto 31.10.2005 without any adverse inference.	**221**
Circular No.1(1)SS(ITR)/2005	15.10.2005	Directed that no penal action may be taken against the taxpayers, who file their return of income by 31.10.2005.	**222**
Circular No.3(18)(ITR)/2005	22.10.2005	Clarified that in case of accommodation having two portions or if a multistory building occupied by different employees, the covered area occupied by each occupant shall be taken into consideration for the purposes of valuation of accommodation in Terms of Rule 9(4) of the Income Tax Rules, 2002.	**223**
SRO 718(I)/2005	16.07.2005	Clause (13G) inserted in Part-II of Second Schedule, whereby withholding tax u/s.148 on import shall be collected @ 1% of the value of re-meltable and re-rollable scrap, as increased by customs-duty and sales-tax, if any, levied thereon.	**224**
SRO 732(I)/2005	22.07.2005	Formats of Income Tax Return forms changed by making amendments in Income Tax Rules 2002.	**225**
SRO 741(I)/2005	22.07.2005	Clause (24) inserted in Part-II of the Second Schedule, whereby in respect of pulses imported, withholding tax u/s.148 shall be collected at reduced rate of 2% of the value of such pulses as increased by custom duty and sales tax, if any, levied thereon.	**226**
SRO 772(I)/2005	03.08.2005	The provisions of withholding tax u/s.148 made inapplicable even on import of wheat flour, in addition to import of wheat.	**227**
SRO 946(I)/2005	12.09.2005	Clause (25) inserted in Part-II of the Second Schedule, whereby services of stitching, dying, printing, embroidery and washing rendered or provided to an exporter or an export house shall be treated as export and chargeable to tax at the rate of equal to the rate of tax applicable to the exporter on export of goods to which such services relate as specified in Division IV of Part-III of the First Schedule.	**228**

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
SRO 989(I)/2005	19.09.2005	Provisions of S.153(6A) made inapplicable to Cotton Ginners by insertion of Clause (47D) in Part-IV of the Second Schedule.	**229**
SRO 1009(I)/2005	26.09.2005	Exemption of Profits & Gains allowed to Dual Fuel (Oil/Gas) power projects set-up on or after 1st September, 2005 on fulfillment of qualifying conditions specified in clause (132) of Part-I of Second Schedule.	**230**
SRO 1010(I)/2005	26.09.2005	Provisions of withholding tax u/s.148 made inapplicable to cement imported in pursuance of Economic Coordination Committee of the Cabinet's decision No.ECC-124/8/2005 dated 01.09.2005.	**231**
SRO 1017(I)/2005	28.09.2005	Certain typographical mistakes remedied in Part-VII and Part-VIII in the Second Schedule of Income Tax Rules, 2002, dealing with formats of Certificate of Collection or Deduction of Tax and Annual Statement of Collection or Deduction of Tax.	**232**
SRO 1033(I)/2005	10.10.2005	By insertion of clause (63A) in Part-I of the Second Schedule, exemption/deduction from total income allowed to any amount paid as donation to the President's Relief Fund for Earthquake Victims, 2005.	**233**
SRO 1034(I)/2005	10.10.2005	Provisions of Withholding Tax u/s.148 made inapplicable on goods donated for the relief of earthquake victims as are exempt from custom duties and sales tax.	**234**
SRO 1037(I)/2005	14.10.2005	Provisions of withholding tax u/s.148 made inapplicable on import of tents, tarpaulin and blankets. Consequential amendment is also made by omission of clause (13F) of Part-II of Second Schedule which provided for reduced rates of 2% withholding tax on import of blankets (acrylic).	**235**
Sales Tax Ruling No.1 of 2005	17.08.2005	Clarification regarding Sales Tax zero-rating under SRO 527(I)/2005 dated 06.06.2005.	**236**
Sales Tax Circular No. 1 of 2005	29.08.2005	Permission given regarding filing of Revised Return for the month of July 2005 on new format prescribed in SRO 812(I)/2005 dated 13.08.2005 by Distributors and Wholesalers dealing in items of Third Schedule to the Sales Tax Act, 1990, without any Penalty or Default Surcharge, because of non-availability of new format on due date of 15th August, 2005.	**237**
Sales Tax Circular No.2 of 2005	03.09.2005	Sales Tax Registered Persons dealing simultaneously in different / composite business activities have been allowed to file separate sales tax returns for their each business activity as prescribed under the relevant notifications in addition to the normal sales tax return-cum-payment challan prescribed under SRO 533(I)/2005 dated 06.06.2005 wherever applicable, subject to the specified conditions for claim of input tax adjustment / refund. The said registered persons who did not file their sales-tax returns for the months of June and July 2005 in the above prescribed manner, allowed to revise their returns accordingly without any penalty or default surcharge.	**238** **239**
Sales Tax General	15.08.2005	Certain amendments made in Sales Tax General Order No.1 of 2005	**240**

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
Order No.2 of 2005		dated 21.04.05.	
Sales Tax General Order No.3 of 2005	01.09.2005	Procedure prescribed to streamline sales-tax refund payments to duty free shops on locally manufactured goods.	**241**
Sales Tax General Order No.4/2005	29.09.2005	Guidelines and Instructions issued to facilitate the dealers of Vehicles for filing Monthly Sales Tax Return-cum-Payment challan prescribed under SRO 951(I)/2005 dated 14.09.2005.	**242**
C. No.3(7) STL&P/05	15.07.2005	Certain clarifications issued in respect of SRO 538(I)/2005 dated 06.06.2005 earlier issued as a consequence of zero-rating of Sales Tax in certain sectors in the Budget 2005-06.	**243**
C. No.1/51-STT/96	16.07.2005	Directed to allow release of imported raw materials for the basic manufacture of pharmaceutical active ingredients and for manufacture of pharmaceutical products under SRO 673(I)/2005 dated 02.07.2005 without payment of sales tax and without requiring any certification from the Ministry of Health.	**244**
C. No.3(7)STL&P/05	21.07.2005	Further clarification issued in respect of SRO 538(I)/2005 dated 06.06.2005 in regard to zero-rating of certain goods.	**245**
C. No.3(1) ST-L&P/05	03.08.2005	Directives issued in respect of continued receipt of a Large Volume of Form "S" related unnecessary endorsements from the Collectors of Sales Tax.	**246**
C. No.3(19) STL&P/13	03.08.2005	Clarification issued regarding SRO 538(I)/2005 dated 06.06.2005 about: (i) Monitoring of Sales Tax Refund (ii) Sanctioning of Refund claim filed under STREAMS project to the extent of consumption of inputs on Exports made.	**247**
C. No.3(4) ST-L&P/05	06.08.2005	Clarification regarding SRO 666(I)/2005 dated 30.06.2005 dealing with Sales Tax (Refund of Excess Input Tax to the Manufacturers) Rules 2005, which are effective from 01.07.2005.	**248**
C. No.1(15)STT/2005	17.08.2005	Clarification regarding zero-rating of Electricity Supply to the units falling under SRO 792(I)/2005 dated 17.08.2005.	**249**
C. No.5/9-STB/2005	30.08.2005	Clarification regarding SRO 813(I)/2005 dated 13.08.2005 read with SRO 889(I)/2005 dated 29.08.2005 dealing with the Sales Tax (Refund of Excess Input Tax to the Dealers, Distributors and Wholesalers) Rules, 2005 as applicable restricted to the wholesalers / dealers / distributors dealing in the goods other than the goods mentioned in the Third Schedule to the Sales Tax Act.	**250**
C. No.3(18)STP/99(pt)	01.09.2005	Compliance Report in respect of DTRE Audits sought by CBR from all Collectorates.	**251**
C. No.5/8-STB/2005	22.09.2005	Clarified that import and supply of Optical Fibre Cable is chargeable to sales-tax @ 15% in terms of SRO 527(I)/2005 dated 06.06.2005.	**252**
C. No.(31)GST/CRO/2005	13.10.2005	In regard to delay in Sales Tax Registration, Collectors have been advised to complete verification process and get the pendency liquidated and convey the updated position to the Board so that the accumulated Sales Tax Registration Applications may be disposed off	**253**

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		without further delay.	
C. No.1(24)-STT/2005	14.10.2005	Instructions issued for implementation of SRO 1035(I)/2005 dated 13.10.2005 granting exemption of sales-tax on goods supplied for free distribution among the victims of the recent earthquake.	**254**
SRO 747(I)/2005	28.07.2005	Amendment in jurisdiction list to include S. No.48 relating to "Bund Road Branch, Lahore" under the heading Collectorate of Sales Tax & Central Excise, Lahore and LTU, Lahore.	**255**
SRO 752(I)/2005	01.08.2005	Amendment in Rule 43(2)(c) of the Sales Tax Special Procedure Rules, 2005.	**256**
SRO 794(I0/2005	10.08.2005	Amendment made in SRO 495(I)/2004 dated 12.06.2004.	**257**
SRO 812(I)/2005	13.08.2005	Amendments made in Rule 15 of Sales Tax Rules, 2005 regarding filing of Return by a Registered Person operating, whether exclusively or otherwise, as dealer, distributor or wholesaler of the goods mentioned in the Third Schedule to the Sales Tax Act, 1990.	**258**
SRO 813(I)/2005	13.08.2005	The Sales Tax (Refund of Excess Input Tax to the Dealers, Distributors and Wholesalers) Rules, 2005 issued.	**259**
SRO 868(I)/2005	25.08.2005	Waiver of Sales Tax u/s.65 for the period from 01.07.1998 to 30.04.1999 on supply of liquor by M/s. Avari Hotels Limited, Lahore, on fulfillment of qualified conditions.	**260**
SRO 869(I)/2005	25.08.2005	Waiver of Sales Tax u/s.65 for same aforesaid period allowed to M/s. Pearl Continental, Lahore, on supply of Liquor by said hotel.	**261**
SRO888(I)/2005	29.08.2005	Amendment made in SRO 609(I)/2004 dated 16.07.2004.	**262**
SRO 924(I)/2005 SRO 925(I)/2005	September, 05 September, 05	Amendments made in SRO 621(I)/2005 dated 17.06.2005.	**263**
SRO 926(I)/2005	10.09.2005	SRO 792(I)/2005 dated 10.08.2005 rescinded with immediate effect.	**264**
SRO 927(I)/2005 to SRO 934(I)/2005	10.09.2005	Specification of Electrical energy supplied by various Electrical Companies to the relevant manufacturing units of the registered persons, as the goods on which sales tax shall be charged at the rate of zero per cent subject to fulfillment of qualifying conditions.	**265**
SRO 936(I)/2005	10.09.2005	Rule 34(1) of Sales Tax Rules, 2005 amended.	**266**
SRO 947(I)/2005	10.09.2005	SRO 907(I)/2004, SRO 908(I)/2004 and SRO 909(I)/2004 all dated 08.11.2004 rescinded with effect from 1st July, 2005.	**267**
SRO 948(I)/2005	13.09.2005	Refund claims of recognized Agricultural Tractor Manufacturers Rules, 2005 issued prescribing the procedure for processing of refund claim by such registered persons.	**268**
SRO 951(I)/2005	14.09.2005	Sales Tax Special Procedure Rules, 2005 amended for prescribing special procedure for Collection and Payment of Sales Tax on Vehicles.	**269**
SRO 992(I)/2005	21.09.2005	No Registered Person engaged in the export of specified goods, shall	**270**

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		either through zero-rating or otherwise, be entitled to deduct or re-claim input tax paid in respect of stocks of such goods acquired upto 05.06.2005, if not used for the purposes of exports made upto 30.09.2005.	
SRO 1002(I)/2005	23.09.2005	Amendments made in SRO 523(I)/2005 dated 06.06.2005.	**271**
SRO 1003(I)/2005	23.09.2005	Sales Tax Special Procedure Rules, 2005 amended to provide for procedure for chargeability of sales tax on Stevedores' Services.	**272**
SRO 1007(I)/2005	26.09.2005	Exemption of Sales Tax allowed on import and supply of the specified ingredients of poultry and cattle feed with their respective HS Codes as given in the First Schedule to the Customs Act, 1969.	**273**
SRO 1035(I)/2005	13.10.2005	Exemption of Sales Tax allowed to goods supplied against funds from the President's Relief Fund for the Earthquake Victims, 2005, or any other such source of the Government for free distribution amongst earthquake victims. Exemption also be admissible on such goods as are purchased by approved voluntary non-government organizations or welfare bodies or supplied by the registered manufacturers for free distribution amongst earthquake victims. Notification shall be effective for 30-days from the date of issuance. Subsequently extended for further 3-months.	**274**
SRO 1038(I)/2005	14.10.2005	Amendment made in Sales Tax (Refund of Excess Input Tax to the Dealers, Distributors and Wholesalers) Rules, 2005, whereby format of Adjustment Note in Annexure 'B' substituted.	**275**
SRO 1039(I)/2005	14.10.2005	Specification of the natural gas supplied by SSGCL to the relevant manufacturing units of the specified registered persons, as the goods on which sales-tax shall be charged at zero per cent subject to fulfillment of specified conditions.	**276**
SRO 1040(I)/2005	14.10.2005	Specification of the supplied by SNGPL.	**277**
SRO (I)/2005	20.10.2005	Amendment made in SRO 678(I)/2004 dated 07.08.2004.	**278**
SRO (I)/2005	20.10.2005	In super-session of SRO410(I)/2001 dated 18.06.2001, exemption from whole of customs-duty and sales-tax on temporary importation of specified goods for subsequent exportation allowed, subject to the fulfillment of specified qualifying conditions.	**279**
SRO 1081(I)/2005 SRO 1082(I)/2005 SRO 1083(I)/2005 SRO 1084(I)/2005 SRO 1085(I)/2005 SRO 1086(I)/2005 SRO 1087(I)/2005 SRO 1088(I)/2005	24.10.2005 24.10.2005 24.10.2005 24.10.2005 24.10.2005 24.10.2005 24.10.2005 24.10.2005	Certain anomalies in SRO Nos.927(I)/2005 to 934(I)/2005 all dated 10.09.2005 through which the Electric Power Supply to major export oriented industries was zero-rated for sales-tax purposes have been removed by these individual SROs.	**280**

EXCISE LAW

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
SRO 653(I)/2005	01.07.2005	The Officers of the Directorate General of Inspection and Internal Audit to exercise the powers of Federal Excise Officers under the specified provisions of Excise Law, subject to the conditions stated therein.	**281**
SRO 654(I)/2005	01.07.2005	The Officers of the Directorate General of Intelligence and Investigation (Customs and Excise), not below the rank of Deputy Superintendent, invested with powers of a Federal Excise Officer u/s.22, 23, 25 and 26 of the Excise Act read with Chapter XIII of the Federal Excise Rules, 2005.	**282**
SRO 684(I)/2005	08.07.2005	Amendment made in SRO 649(I)/2005 dated 01.07.2005 for exclusion of territory of Azad Jammu and Kashmir form non-tariff areas, for purposes of levy of Excise Duty.	**283**
SRO 807(I)/2005	12.08.2005	Admissibility of Rebate of Federal Excise Duty, paid on base oil used in the manufacture of specified Motor Lubricating Oil / Marine Lubricating Oil, exported out of Pakistan, at specified rate on fulfillment of conditions.	**284**
SRO 808(I)/2005	12.08.2005	Admissibility of Rebate on prescribed rates of Federal Excise Duty paid on cement used in manufacturing of specified Fibre Cement pipes and Fibre Cement flat sheets and white chrysotile asbestos exported out of Pakistan, on fulfillment of qualifying conditions.	**285**
SRO 809(I)/2005	12.08.2005	Eighteen SRO Notifications No.1189(I)/75 dated 02.12.1975; 637(I)/80 dated 09.06.1980; 1279(I)/80 dated 21.12.1980; 502(I)/81 dated 30.05.1981; 176(I)/84 dated 11.02.1984; 439(I)/90 dated 15.05.1990; 2(I)/91 dated 02.02.1991; 929(I)/93 dated 05.10.1993; 1174(I)/93 dated 05.12.1993; 902(I)/95 dated 07.09.1995; 718(I)/95 dated 17.07.1995; 1032(I)/95 dated 18.10.1995; 290(I)/96 dated 09.05.1996; 893(I)/96 dated 25.09.1996; 894(I)/96 dated 25.09.1996; 1044(I)/96 dated 29.09.1996; 1296(I)/96 dated 16.11.1996 and 1051(I)/97 dated 25.10.1997 rescinded.	**286**
SRO 1004(I)/2005	23.09.2005	Federal Excise Rules 2005 amended to substitute Rule 43 – Special Procedure for Collection of Federal Excise Duty on Telecommunication Services.	**287**
Circular No.9(1)CEB/2004	25.07.2005	Instructions regarding deposit of Federal Excise Duty charged on all the clearances / sales of excisable goods made by the excisable units during the tax period and filing of Monthly Returns etc.	**288**
Federal Excise General Order No.2/2005	15.08.2005	Instructions for compliance of variousprovisions / issues relating to Federal Excise Duty.	**289**
Federal Excise General Order No.3/2005	02.09.2005	Instructions for uniform records / documentation and other related obligations for the cigarette manufacturers.	**290**
Circular No.1(17)CEB/1996	01.10.2005	Implementation of SRO 1040(I)/2005 dated 23.09.2005 regarding Collection of Federal Excise Duty from Telecommunication Services.	**291**

CORPORATE LAWS

Circular No.7 of 2005	15.07.2005	Criteria specified for a Life Insurance Company or an Asset	**292**

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		Management Company for appointment of its Chairman / President / Chief Executive and other Key Employees to become eligible for registration and to continue its operations as a Pension Fund Manager.	
Circular No.8 of 2005	15.07.2005	Investment Policy under Rule 24(3) for investment of contributions received by Pension Fund Managers and Allocation Policy for Selection by the Individual Participant under Rule 14(3) and 14(4) of the Voluntary Pension System Rules, 2005 prescribed.	**293**
Circular No.9 of 2005	16.08.2005	Certain mandatory requirements specified for certification by Actuary in the Financial Condition Report of Group Insurance to encourage healthy competition among the Life Insurances.	**294**
Circular No.10 of 2005	16.08.2005	All NBFCs and Companies regulated under the NBFC Rules 2003 are advised to ensure that all applications made to the Commission under the NBFC Rules, 2003 and the Regulations shall comply with the requirements of theRule-30 of the Companies Rules, 1985.	**295**
Circular No.11 of 2005	19.08.2005	All NBFCs undertaking the business of Investment Finance Services, Leasing, Housing Finance Services, Discounting Services and Venture Capital Investments directed to obtain annually a credit rating from a Credit Rating Company registered with SECP, with a view to safeguard interest of all stakeholders.	**296**
		Further, all NBFCs undertaking the business of Investment Advisory Services and Asset Management Services directed to obtain annually a rating specific to their management quality and to the performance of the Collective Investment Schemes managed by them. Such ratings are to be made public within 7-days of the notification and shall also be disclosed in annual and quarterly reports, advertisements and brochures.	**297**
Circular No.12 of 2005	19.08.2005	In order to avoid conflict of interest between NBFCs, it is directed that all NBFCs to appoint only such persons on their Board, who do not hold such office in any other NBFC engaged in similar business/holding similar licenses. Similarly, all NBFCs undertaking business of Investments Advisory Services to ensure that their representation on the Board consist of such persons, who are not on the Board of any other Investment Company.	**298**
		Exception provided only for nominees of the Federal or Provincial Government on the Board of any NBFC. Further directed that all NBFCs shall appoint appropriate replacement on the respective Boards latest by 30.09.2005, in case of any representation already on the Bard contrary to above directions.	**299**
Circular No.13 of 2005	29.08.2005	Exemption granted to all NBFCs from compliance with the disclosure requirements of Clause 3C of Part-II of the Fourth Schedule to the Companies Ordinance, 1984 with effect from financial year ending on June 30, 2005 or onwards, in view of practical difficulties.	**300**
Circular No.14 of 2005	12.09.2005	Regulations 4(1) of Part-II(A) of the Prudential Regulations for Non-Banking Finance Companies, in respect of Financial Indicators of the Borrowers of Prudential Regulations for NBFCs issued vide Circular No.2 of 2004 dated 21.02.2004, modified as under :	**301**
		"(1) It is expected that at the time of allowing fresh	**302**

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		exposure / enhancement / renewal, the current assets to current liabilities ratio of the borrower shall not be lower then 1 1. However, in exception cases, NBFCs may relax this ratio upto 0.75 : 1 if they are satisfied that appropriate risk control measures have been put in place".	
SRO 665(I)/2005	28.06.2005	In suppression of all its old notifications, commission directed that IAS 1, 2, 7, 8, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 and any further revisions shall be followed in regard to the accounts, preparation of balance sheets and profit & loss accounts of the listed companies.	**303**
SRO 721(I)/2005	19.07.2005	Exemption from application of clause (6) of Part-I of the Fourth Schedule to the Companies Ordinance to listed companies and their subsidiaries till 31st December, 2005.	**304**
SRO 771(I)/2005	02.08.2005	Amendment in Para 3(i) of Part-I of the Fourth Schedule to the Companies Ordinance, 1984 regarding disclosure requirement of listed companies.	**305**
SRO 865(I)2005	24.08.2005	Directive to follow Islamic Financial Accounting Standard I issued by the ICAP in regard to the financial statements prepared in the context of historical cost convention while accounting for Murabaha transactions undertaken by a Bank as defined in the Standard.	**306**
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SYNOPSIS OF IMPORTANT CASE LAW

INCOME TAX

CITATION	SECTION	ISSUES INVOLVED
2005 PTD 1328 High Court of Sindh	Sec 50(5), 80DD and Clause 118-D of the Income Tax Ordinance, 1979 **(The Repealed Ordinance)**	In this case Petitioner sought relief that the Customs authorities be directed to charge Income tax under Section 50(5) excluding Sales Tax . The Hon'ble High of Sindh after examining the Provisions of Section 50(5) of the Income Tax Ordinance, 1979 and Section 25 of the Customs Act has held that at the time of collecting the income tax on the import of the goods, value of the goods is to be taken as value of the goods determined u/s 25 of the Customs Act along with customs duties and sales tax, if any, to be paid on it.
(2005) 91 TAX 26 (Trib)	Sec 13, 56 & 65 of the Repealed Ordinance	It is case of an exporter who filed statement u/s 143B. The assessing officer while examining the Wealth Tax return found that assessee has purchased a immovable property. He therefore issued notice u/s 56 which was contested by the assessee on the ground that he is an exporter and his income falls under Presumptive Regime and submitted reply / explanation of investment. The assessing officer without passing any order to the proceedings initiated u/s 56, issued notice u/s 65 which was also contested by the assessee. However, the assessing officer made the addition in the proceedings initiated by him u/s 65. The assessee succeeded before the first appellate forum. It appears that learned CIT(A) granted the relief to the assessee on the ground of change of opinion as the information about the property was already disclosed in the Wealth Tax Return. Department filed second appeal before learned Tribunal on the ground that Assessing officer correctly made the addition. After examining the case and hearing the parties, the learned Tribunal held that action of assessing officer in leaving the matter initiated u/s 56 undecided and issuing notice

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		u/s 65 which was not in accordance with the sprit of law and dismissed the departmental appeal. However the learned Tribunal did not approve the reasoning of the learned CIT(A) in respect of change of opinion and held that proceedings of Income Tax and wealth tax are different in nature.	
2005PTD1802 High Court Lahore	Clause 98 & 125B of the Second Schedule to the Repealed Ordinance	*In this case, the Taxpayer had claimed exemption of income under Clause 98 of the Second Schedule to the Income Tax Ordinance, 1979 After the expiry of the said clause 98, the Taxpayer claimed exemption under clause (125B), Part I of the* Second Schedule to the Income Tax Ordinance, 1979 which provide exemption in respect of the following - ``*(21) Automotive parts and components used in motor vehicles of all sorts." The Income of the assessee was taxed on the ground that time period of said Clause 98 had expired and they could not claim exemption. The Taxpayer contested the issue before the Commissioner* Appeals *which was rejected. The learned Tribunal in the second appeal allowed the relief on the basis of availability of exemption under Clause 125 B. The department reference/ appeals were heard by the Hon'ble High Court of Lahore and the Hon'ble High Court agreed with decision of the learned Tribunal and held that . the Taxpayer rightly claimed tax exemption under Clause (98) while it was in force. There was no occasion to resort to clause (125B) of the Second Schedule to the Income Tax Ordinance, 1979. After expiry of Clause (98) the only clause available to the assessee was the aforesaid clause (125-B). Their lordships also examined the issue that whether the parts and components used in a tractor are to be considered as parts and components used in a motor vehicle? After examining the dictionary meaning of term "motor vehicle" it was held that the 'tractor' also falls within the purview of 'motor vehicle and that the legislature intended to provide tax exemption to the parts and components used in motor vehicles of all sorts including the tractor.*	
2005PTD1861 High Court Lahore	Section 23 of the Repealed Ordinance	The Taxpayer in this case filed his return for the year, 1990-91, in which expenses on account of the secret commission/speedy money which was not accepted by the Assessing Authority and addition to the income was made. The Taxpayer failed in the First and Second Appeals and filed Appeal u/s 136(1) The only question raised before the Hon'ble court was that whether the amount allegedly paid by the appellant, for the purpose of procuring certain contracts or for the promotion of its business, even as illegal gratification, which, the assessee terms as speedy money or secret commission, is permissible expenses deductible from the income. The Hon'ble Court observed, that any expenditure, which can be lawfully expended by the assessee, has to be excluded from his income, but this does not include the illegal gratification given by the assessee to some one for procuring the contracts or for the promotion of its business or profession, that too by dubious and illegal means, for which, there is neither any record nor any receipt. Their lordships observed that there is no concept recognized in law, as secret commission of speedy money, which can be allowed and counted towards the expenses of the assessee. The reference was dismissed.	
2005PTD1845 High Court Lahore	Sec 59 of the Repealed Ordinance	In the case, the return of Taxpayer for the Assessment year 1996-97 was excluded from the purview of Self Assessment Scheme for the alleged reason that Scheme is not applicable to the new assessees. The First appellate forum had decided the issue against the taxpayer, where as the learned Tribunal had allowed the claim. The Hon'ble High court while deciding the departmental Reference held that the reason	

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		for exclusion has not been substantiated and further held that for the year, 1996-97, there was no bar that a new assessee does not qualify under the scheme.	
2005 PTD1790 High Court Lahore	Sec 80C & 13 of the Repealed Ordinance	In this case addition was made by the Department under Section 13 for alleged source for funds for imports. The case of the taxpayer was that since his income falls under Final Tax Regime under Section 80C, no further action can be taken under Section 13. The Hon'ble High Court observed that finality was attached with the income/profit and gains out of transaction of import. However, the Department had the jurisdiction to invoke the provisions of Section 13 to probe into the source of investment of the consignment.	
2005 PTD1607 High Court of Sindh	Sec 50(4), 80C, 143 B & Clause 9 of Part IV of the Second Schedule to the Repealed Ordinance *	Brief facts of the case are that the appellant company is fully owned by the National Fertilizer Corporation, which is working under the administrative control of the Ministry of Production. The appellant company is involved in the production of Urea and allied products and from time to time has entered into agreements with the marketing company for the sale of its products on the terms and conditions appearing therein. Accordingly, advance income tax under the provisions of section 50(4) of the Ordinance was deducted by the marketing company on the payments made to the appellant company. For the assessment year 1998-99, the appellant company filed a statement under section 143-B of the Ordinance claiming that it qualified for assessment under section 80-C as it had made supplies to the marketing company on which advance tax had been deducted. The DCIT rejected the claim of the appellant company and upon appeal before the CIT (Appeals) the order of the DCIT was upheld. The appellant's appeal was also not accepted by the learned Tribunal. It was argued before the Hon'ble High Court of Sindh on behalf of the Appellant that findings of the authorities are not sustainable in law as appellant's agreement with the marketing company was not an agency agreement and income of the appellant was covered under Section 80 C as there was outright sale. It was further argued that per provision of Section 80C of the Ordinance, any amount received under which tax is deductible under section 50(4) shall be deemed to be the total income tax liability of the assessee. Hence, , the nature of the transaction is totally immaterial to the applicability of section 80C of the Ordinance. Consequently, in view of the fact that the supplies were made by the appellant company for which payment was received less the advance income tax is sufficient for the appellant company to claim the benefit of section 80C. In this regard reference was made to the provisions of Section 50(4) of the Ordinance, which provides for the deduction of advance income tax on supplies/sales made by one person to another. It was also argued that reliance of the Commissioner (upheld by the learned Tribunal) upon the past history of the marketing company i.e. that it sought an exemption from being subjected to tax under section 80(D) (turn over tax) on the basis that the sales made by it did not represent its own sales but in fact it acted as an agent of the producing companies namely Pak Saudi Fertilizer Company, Pak Arab Fertilizer Company, Pak American Fertilizer Company and Lyallpur Chemical and Fertilizer Company and Hazara Phosphate and Fertilizer Company (which along with the marketing company are fully owned units of the National Fertilizer Corporation Limited). Such exemption was granted by the C.B.R. vide office memorandum 11-1-2003 , however, in this memorandum it is clearly mentioned that in the marketing company's Books the sales on behalf of other units of the National Fertilizer Corporation shall not be included in the turn over of the marketing company. Hence, as the word "sale" has been used it cannot be interpreted as any thing else. According to Learned Counsel as turn over tax was being paid twice i.e. once by the producing companies on sale to the marketing company and also by the marketing company upon its sale to consumers, hence exemption was being sought although the liability was admitted. On the other hand, the Department argued and raised a preliminary objection that the appeal does not raise any question of law arising from the decision of the learned Tribunal and hence is to be dismissed on this short ground alone. In this respect it was submitted that only one issue was decided by the learned Tribunal i.e. whether the supply of	

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fertilizers by the appellant company to the marketing company was in the nature of a sale so as to attract the provisions of section 80C of the Ordinance. This issue was dependent upon the interpretation of the agreement between the two companies and accordingly the learned Tribunal came to the conclusion that this was an agency agreement after consideration of all the facts and circumstances of the case and hence the appellant company could not take the benefit of section 80C. It was therefore argued that interpretation involves a question of fact and the appeal is not maintainable. It was further submitted that prior to the assessment year in question, the appellant company was being assessed normally under section 62 of the Ordinance. However, for the assessment year 1998-99 the appellant company filed a statement under 143-B of the Ordinance claiming assessment under section 80C while placing reliance upon the agreement in question between the Companies. It was submitted that the matter was discussed between the appellant company and the revenue authorities as a result of which the ITO passed the assessment order rejecting the stand taken by the appellant company which was upheld by the CIT(A) and the learned Tribunal. Departmental counsel fully supported the version of the revenue authorities since the various clause of the agreement provide of the distribution and marketing of the appellant company's fertilizer by the marketing company viz. that the latter was an agent of the former. In this respect learned counsel referred to the recitals of the agreement and clauses. Finally, it was argued that deduction at source under section 50(4) of the Income Tax Ordinance does not automatically entitle the assessee to take advantage of the benefits provided under section 80C of the Ordinance since this provision would only be applicable when the tax is deductible under the law under section 50(4) and not when it is deducted at the option of the assessee. In this connection it was further submitted that as per the Scheme of section 50(4) of the Ordinance, all assesses are bound to deduct income-tax at source on all sales/supplies made by them to others and the ITO is not bound at the stage of deduction/collection of tax to examine whether or not this would give rise to the assessee's claim to be taxed under section 80C of the Ordinance. It was submitted that this exercise would be done by the ITO after the return has been filed where after it would be open for him to decide whether the case is covered under section 80C or not. The appellant in reply submitted that insofar as the preliminary objection is concerned in income tax matters the interpretation of a contract is always a question of law. For this proposition, he relied upon Mrs. Yasmeen Lari v. Registrar ITAT (1990 PTD 967). As regards the history of the appellant company vis-à-vis Section 80-C of the Ordinance, it was submitted that as per Clause 9 of Part IV of the Second Schedule, section 80-C would not apply to a manufacturer who opts out of the presumptive tax regime and the company chose to do so up to the assessment year 1997-98, up to which year it was taxed under the normal law. Thereafter vide the Finance Act, 1998, Manufacturer of goods were required to submit an option in writing if they wish to be charged to tax under the provisions of section 80C read with section 50(4) of the Ordinance which option would hold good for a period of three years. Such option was exercised by the appellant company in writing and hence cannot be rejected on the basis that in the past the assessment had been finalized under the normal provisions of the Ordinance. The Hon'ble Court after considering the arguments, firstly addressed the issue of preliminary objection and held that issue needs interpretation of agreement , as such in view of judgment reported as 1990 PTD 967, question of law arises. The Hon'ble Court thereafter examined the scope of Section 80 C and Section 50(4) and observed that upon a perusal of section 50(4)(a) of the Ordinance it would be seen that it charges any person responsible for making any payment to another person on account of supply of goods or services rendered where the total value exceeds Rs.50,000 or Rs. 10,000 in any financial year respectively as the case may be, to deduct advance income tax at the rate specified in the first schedule. Accordingly, credit for the income tax liability of the recipient shall be given as regards such amounts deducted in advance subject to the provisions of section 53 of the Ordinance. Concurrently section 80C(1) read with section 80C(2)(i) provides that the amount representing payments on which tax is

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		deductible under section 50(4) shall be deemed to be the income of the assessee/payer and tax thereon shall be charged at the rate specified in the First Schedule. Reading both the provisions of section 50(4)(a) and 80C(2)(a)(i), it would be seen that the word used in the latter provisions with respect to discharge of income tax liability vis-à-vis a resident are "the amount representing payments on which tax is deductible under section 50(4), other than payments on account of services rendered". Consequently, in their lordships view, where the word used in "deductible" and not "deducted", it cannot be said that merely because advance income tax has been deducted from the payments made by the payer to the payee/assessee, the latter would qualify to claim the benefits of section 80C of the Ordinance. The Hon'ble court agreed with the Departmental Counsel therefore, that once the return has been filed by the assessee claiming the benefits of the presumptive tax regime, it would be open for the ITO to allow or refuse such benefits depending upon his opinion as to whether or not indeed, a supply or service had been made/rendered by the assessee to the payer. Insofar as the case cited by the appellant it was observed that case cited by the appellant in fact supports the view of the Department where learned Division Bench of Lahore High Court came to the conclusion that the expression supplies as used in section 50(4) of the Ordinance does include sales. It was further held that the object of the section is efficient and quick collection of tax in advance which amounts to assessment of liability subject to section 9 which is the charging section of the Ordinance. It was observed that that mere deduction of tax at source under section 50(4) does not automatically entitle the assessee to claim the benefits under section 80C of the Ordinance since section 9 thereof clearly lays down that income tax shall be charged, levied and paid by every person in respect of the total income for the year subject to the provisions of the Ordinance. The Hon'ble Court therefore, held that learned Tribunal was justified in holding that Department has the power to pass an order u/s 62 even in the cases where Statement u/s 143B has been filed. The Hon'ble Court thereafter examined the issue decided by the learned Tribunal i.e. whether in the facts and circumstances, the appellant company was not entitled to the benefit of the presumptive tax regime embodied in section 80C of the Ordinance. It was observed that involves the interpretation/appreciation of the agreement between the Parties. After examining the various clauses of the agreement it was held that the learned Tribunal was not justified to hold that agreement between the appellant and the marketing company was of agency and it was held that income was covered under Section 80 C. In respect of option and the history of the appellant, it was observed that Section 80C of the Income Tax Ordinance was inserted in the Act vide Finance Act, 1991 and Cause 9 of the Part IV of the Second Schedule thereof gave the manufacturer the right to opt out of the same. Vide Finance Act, 1996 the words "opt out" appearing in the aforementioned clause were substituted by the words "opts for". This means therefore, that unless the option to avail the presumptive tax regime is exercised the manufacturer would continue to be taxed under the normal law. The Hon'ble Court observed that admittedly, the appellant company did not exercise this option until the assessment year in question viz. 1998-99 as such in their lordships opinion where the law gives an unfettered right to the assessee to opt in or out of the presumptive tax regime under section 80C of the Ordinance, then the past history of the assessee i.e. of opting in or out of this regime is of no consequence.	
2005 PTD 1942. Supreme Court of Pakistan	Sec 50(7A) of the Repealed Ordinance	In this case, various Contractors of the local councils challenged the vires of Section 50(7A) of the Ordinance, 1979 when they were acquired to deposit advance tax under Section 50 (7A) by respective Zilla Committee / Metropolitan Corporations in terms of the said Section. The Hon'ble Lahore High Court had discussed the various Petitions on the ground that Section 50 (7A) specifically provide for collection of advance Income Tax of the Sales price of the property sold by the Government, local council or a Public Company and that explanation added through Finance Ordinance, 1984 stipulates that sale of property would include awarding to any person lease to collect octroi duties tolls fee or other levies and that contractors having signed the	

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contract could not wriggle out of the same through a constitutional Petition. After hearing the parties, Hon'ble Supreme Court of Pakistan dismissed the petitions and observed in respect of Section 50 (7A) which portion of the judgment is reproduced in extensor.

"11. A bare reading of the above referred provision would indicate that the law envisages levy of advance income tax on the basis of sale price of the property in question and by virtue of the Explanation added to section 50(7A) of the Ordinance, the awarding of any lease to any person, ``including a lease of the right to collect octroi duties, tolls, fees or other levies, by whatever name called'' have been included in ``sale''. This Explanation was inserted by Finance Ordinance, 1984 through a Presidential Order. It is a deeming provision and it is a settled principle of law that a deeming provision in a taxing statute has the effect of bringing within the mischief of chargeability on income which may not have actually accrued but by fiction of law is supposed to have accrued. The rationale appears to be that a person who has been awarded a contract would earn income and the advance tax would be a security and would be adjusted when the final liability is determined. The concept of advance income tax is neither new nor its vires are under consideration before this Court for the first time. Section 80-C of the Ordinance embodies the concept of advance tax and section 236 of the Income Tax Ordinance, XLIX of 2001 made a provision for levy of advance tax on the telephone bill of a subscriber. Earlier to that section 53 of the Income Tax Ordinance, 1979 carried this power. In Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan (1997) 76 Tax 5 (S.C. Pak)=(PLD 1997 S.C. 582) the vires of Section 80-C of the Ordinance were challenged. While dismissing the appeals and upholding the vires of the said provision it was inter alia observed at page 677 as under:-

(xvi) that the process of income determination is often expressed as one of the matching costs and revenues. It involves the process of working out costs used in connection with the earning of the revenue in a particular accounting period.

(xvii) That generally the effect of a deeming provision in a taxing statute is that it brings within the tax net an amount which ordinarily would not have been treated as an income. In other words, it brings within the net of chargeability income not actually accrued but which supposedly loss accrued notionally."

12. The vires of section 236 of Income Tax Ordinance, XLIX of 2001 were challenged before the Sindh High Court by filing Constitutional Petition No. D-468 of 2003 and the same was dismissed. While upholding the Sindh High Court judgment this Court in CP No. 2187/2003 referred with approval to the operative part of the said judgment of the Sindh High Court which is as under:-

The advance tax impugned in this petition does not fall within the purview of presumptive tax regime. The

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advance tax collected by the petitioner No.2 from the petitioner No.2 and all other buyers of the pre-paid telephone cards shall be merely credited with the Government which can be utilized and adjusted to the extent found necessary towards the ultimate liability of income tax due, after it has been determined and the excess amount if any is to be refunded to the purchasers of pre-paid telephone cards...."

13. In Commissioner of Income Tax v. Asbestos Cement Industries Ltd. and others [(1992) 66 Tax 140 S.C. Pak)] this Court declared section 33 of the Ordinance to be tenable and levy of advance tax as valid. The vires of the provision under the challenge before this Court i.e. section 50(7A(of the Ordinance came up for consideration before the Sindh High Court in the case of Trustees of the Port of Karachi, v. Central Board of Revenue (1989 PTD 1048) wherein at page 1060 while holding the provision (1989 PTD 1048) wherein at page 1060 while holding the provision as inter vires at page 1060 as follows:-

A. Taxing Statue usually contains charging and machinery provisions. The former fixes the liability to pay tax and has to be construed strictly and where two reasonable interpretations are possible one which favours the subject should be accepted. Once the liability to tax is fixed the machinery provision comes into play. This has to be construed liberally and in a manner that the recovery is ensured. Where more than one reasonable interpretation of such provision is possible one which favours recovery should be adopted. Such extended meaning can be given only on the basis of reasonable construction of the language of the statute. Section 50(7A) contemplates sale by public auction by a person who may be an auctioneer, the property belonging to Government, local authority, a public company belonging to Government, local authority, a public company and other specified persons. The sub-section fixes the responsibility of the person selling such goods by public auction to collect advance tax. In case of failure to deduct tax u/s 52, he shall be deemed to be an assessee in default....."

14. There is yet another aspect of the matter. Admittedly all the appellants (except petitioner in CPs Nos. 3000-L to 3002-L of 2000) are contractors/lessees and in terms of the contract signed with the local authorities concerned they had agreed to pay the advance income tax. They cannot wriggle out of the said contractual obligation by invoking the constitutional petition."

2005 PTD 1956 High Court Lahore	Sec 50 and 52 of the Repealed Ordinance	In this case, the taxpayer was held to be an assessee in default under Section 52 and was consequently charged to tax. The assessee succeeded in first round of Appeal where it was held that Section 50(10) was not to attract Section 50(4) for the reasons

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		that paid up capital of the taxpayer was below 1.5 million. The department preferred Appeal before the learned Income Tax Appellate Tribunal which reversed the order and restored the order of Taxation Officer by holding that exemption in respect of paid up capital through notification No. 388-I of 1994 dated 07-3-1994 was not protected by Section 50(10) of the Income Tax Ordinance read with proviso-(ii) of Section 50(4). The assessee/taxpayer filed Income Tax Appeal before the Hon'ble Lahore High Court. The Hon'ble Lahore High Court thoroughly examined the provisions of Section 50 (4) and notifications issued thereon and finally held that legislature has expressed his intention not to exempt a company on the basis of paid up capital from the obligation of deducting Income Tax at source under Section 50 (4) and it was also held that although the notification No. SRO-368-I/1994 dated 07-5-2004 was validated and continued through Section 50(10), yet exemption granted to the companies with paid up capital below 1.5 million was discontinued.	
(2005) 91TAX467 High Court of Sindh	Sec 19 of the Repealed Ordinance	In this case question for determination before the Hon'ble High Court of Sindh was ``Whether the learned Income Tax Appellate Tribunal was justified to hold that the relief under section 19(3) is also available to a person when he was in occupation of the house property for his residence not in his capacity as its owner but as sub-lessee of the Lessee employer of the said property?'' Brief facts of the are that the Taxpayer/ Respondent is an employee of the National Bank of Pakistan, who after obtaining loan from the bank constructed a house and thereafter gave it on rent to the bank and started living in it as an employee of the aforesaid bank. The respondent claimed exemption from payment of tax on an amount of Rs.12,559 which he received from the bank as house rent. The Assessing Officer, however taxed the amount as income from house property and added the same to the total income. The learned Tribunal deleted the addition by placing reliance on its decision reported as 1989 PTD 917. The Hon'ble Court after hearing the parties and examination of Section 19 and Explanation inserted through Finance Act, 1996 held that Explanation is retrospective in nature and that order of the Tribunal was not sustainable in law.	
(2005) 92 TAX 49 High Court of Sindh	Sec 80D & 89 of the Repealed Ordinance	In this case, the Assessing officer imposed additional tax u/s 89 on failure of Taxpayer to pay tax under Section 80D. The said imposition was confirmed in Revision. The Taxpayer filed Constitution Petition and questioned the imposition of additional tax under section 89 of the Income Tax Ordinance, 1979 on the ground that the additional tax under section 89 can be levied only in cases where the assessee fails to pay the whole or any part of tax levied under Chapter VII or of whole or any part or any penalty levied under chapter XI or has been allowed stay of the payment or payments installments of the tax under subsection (2) of section 85 and not otherwise. Learned Advocate argued that admittedly the petitioner had paid tax under Chapter VIII in terms of section 80D of the Income Tax Ordinance, 1979, and as such the petitioner was not liable for the payment of additional tax and the impugned orders passed by the respondents are without any lawful authority. The Departmental Counsels contented that additional tax was correctly imposed. The Hon'ble High Court of Sindh after examining the provisions of Income Tax Ordinance, 1979 held that imposition of additional tax was proper.	
(2005) 92 TAX 39 High Court Lahore	Sec 50(4A) of the Repealed Ordinance	In this case the Taxpayer is a private limited company and during the period relevant to the assessment year 1997-98 derived income from selling airline tickets on commission basis. In the statement of accounts furnished by the Taxpayer to the Assessing Officer commission received from the airline was disclosed. The Assessing Officer opined that the assessee claimed `sales promotion expenses' however, it was found that no tax was deducted at source as envisaged under the provisions of section 50(4A) was withheld by the assessee-Company. Therefore, the assessing Officer issued show-cause notice under section 52 in reply of which the Taxpayer inter alia replied that it has not made any cash payment to any sub agents, it sold air-tickets to the sub-agents at reduced rates and that the transaction could at the best	

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be regarded as cash discount allowed on sale and that it was factually a recipient and not payer and hence not responsible to deduct tax under section 50(4A). On the other hand the assessing officer found these submissions to be unsatisfactory for the reason that since commission was disbursed on account of the assessee-Company the responsibility to withhold tax under section 50(4A) was hence vested in the assessee's Company and that the arrangement made between the assessee-Company and the sub-agents regarding passing on sale proceeds of tickets to the assessee company after deduction of commission, was immaterial, as primarily the responsibility for payment / withholding of tax lied with the company. It was further observed by the assessing officer that the transaction could not be regarded as cash discount as major portion of the commission was itself claimed by the assessee to have passed on to the sub-agents and that the sub-agents were rendering service to the assessee and were hence genuinely entitled to commission for the work done by them. The Taxpayers appeals before the First and Second appellate forum did not succeeded. However the learned Tribunal directed that commission receipts be bifurcated under the head "commission" and "discount" to reach the exact tax liability. The Hon'ble High Court examined in detail the provisions of Section 52 and 50(4A) and observed that the liability of a person to be treated as an "assessee in default" is co-related to the default made under section 50(4A) That provision in turn is clear that a person falling in the categories contemplated-in the said provisions making any payment in full or in part, shall be required to deduct tax at the time of making such payment at the rate specified in the First Schedule. Obviously, in case of default the provisions of section 52 will come into motion and he shall be deemed to be an "assessee in default" in respect of such tax. It was observed that in the case in hand it was not disputed that the assessee, as an agent of the air line, ceded part of its commission to walk in passenger i.e. tickets sold at the counter as also to other persons who acted as sub-agents directly or indirectly. It is also not disputed that the assessee-Company did not make any cash payment to any sub-agent. The question of cash payment to a walk in passenger or over the counter hardly arises at all. The form in which part of the commission was ceded certainly means selling of air-tickets at a rate lower than the one on which the assessee was allowed 'by its principal airline to sell the tickets. Therefore, the contention that at best the ceding of a part of commission was a discount both in case of walk in passengers as well as sub-agents bears weight. The Hon'ble Court further observed after examining the provision of Section 50(4A) that the first condition that a person "responsible" for making any payment in full or in part is certainly missing in this case. The assessee as a commission agent was not responsible to make any payment either while selling tickets over the counter or through sub-agents. It is correct that the words "discount" and "commission" have two different connotations and even results. It is that the word "commission" generally signifies disbursement of an amount relatable to the total amount involved in a transaction. It can be any percentage or any sub-division of the amount involved in the transaction. On the other hand, the word "discount" signifies a certain amount of money normally identified by percentage, which is taken away from the face value of the security or property which is subject-matter of the transaction. It was observed that it is certainly correct that the payment of a sum as "commission" as visualized in the provision by and on behalf of the entities stated therein is squarely hit by the mischief of the provision. However, in the case of the assessee in hand as a travel agent the term "commission" with its significance is not attracted for the simple reason that his commission from the principal airlines already stands determined. Whatsoever he is ceding or parting with is a chunk of his own commission earlier allowed to him on every ticket. Their lordships further observed that also the use of the word "responsible" in the said provision indicates some kind of duty or obligation on the part of the person to make the payment on behalf of the entities identified in the provision. The word "commission" in that sense signifies that a transaction was reached between two persons, a buyer and a seller of commodities and services etc. which were done and completed through the medium of a third person who, besides doing many other acts, brought the two parties together. Such

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		person or commission agent plays a key role keeping in -view the trust and confidence reposed in him both by the seller as well as the purchaser of the commodity or services. Not only that he acts on behalf of both parties but also his judgment as to the quality, quantity and standard of the thing "or services sought to be bargained is accepted by the parties. The earning of that amount, of course subject to the deduction of admissible expenses, is the income of the commission agent. Most significant character of this kind of income is its receipt or payment in cash or in any other form to be categorized as an "amount". On the other hand, in case of a commission agent selling out either the product of his principal or providing services as in the case of a travel agent, he does not pay any "amount" either as discount or as commission. Therefore, the basic ingredient to attract the provision i.e. "making any payment in full or in part" is absent in such cases. It further needs to be noted that in cases of sub-agents, though they fall in the same character, yet they also like the assessee as travel agent, are neither "responsible" to make any payment to an air passenger nor any payment is made to them by the travel agent. A sub-agent in this line of business only purchases a ticket from the agent at a rate lesser than the one shown on its face. In that manner he only shares part of the commission earlier allowed to the agent but does not receive any cash payment from the agent nor he makes any payment to the end customer, i.e. the air passenger. It was therefore held that since the two basic conditions required to attract the provisions of section 50(4A) i.e. a kind of obligation to pay and secondly the actual payment made on account of brokerage or commission are absent in the case in hand the Taxpayer, was not liable nor he could possibly be treated as an assessee in default.	
2005 PTD(Trib) 1679	Sec 122(5A) of the Repealed Ordinance	In this case, the learned Tribunal has decided two very important issues in respect of jurisdiction of invoking the provision of Section 122(5A). It has been held that prior to 1.7.2003 there was no power to invoke the provision of Section 122(5A). Secondly it was also held that if the Assessment meant to be amended was subject matter of appeal and appeal was decided, than the Assessment will merge in the Appellate order, thus provision of Section 122(5A) cannot be invoked.	
		SALES TAX	
(2005) 92 TAX 19 High Court Lahore	Sec14,18,23 and 59 of the Sales Tax Act, 1990	In this case, the assessee a commercial importer, imported chemicals, which were affected prior to 17.8.1996 on which date the assessee was not obliged to register itself compulsorily u/s 14 as an importer. It opted for voluntary registration u/s 18 and was registered on 17.8.1996. It, thereafter supplied the imported chemicals to registered manufacturers and also issued replacement invoices in respect of such supplies. The Departmental officers objected to the issuance of replacement invoices on the ground that the assessee has passed on the incidence of sales tax to registered persons under the cover of Section ,59 and that benefit was not available to the person voluntary registration u/s 18. The assessee was therefore charged with violation of Section 18 and 59 of the Sales Tax Act, 1990.The Hon'ble Lahore High Court after examining the provisions of Section 18 held that assessee has acted legally under the provision of law. It was further held that Section 59 as it existed during the relevant period had no bearing to the issue. It was therefore held that assessee has not violated the provisions of Section 18 and 59.	
2005 PTD (Trib) 1341	Sec 2, 3, 6, ,7,16, 22,23 ,33,34 and 49 of the Sales Tax	Brief facts of the case are that while scrutinizing the audited reports for the period 1995-96 to 1997-98, of a Taxpayer it was noticed that the said person had disposed of various old plants and machinery and fixed assets for the period from 10-1-1995 to 31-12-1998 without payment of sales tax which included receipt of insurance for stolen assets. The Deputy Collector issued a Notice dated 25-5-2000 requiring the Taxpayer to show cause why the principal amount of sales tax should not be	

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recovered from them along with the additional tax due and also why penal action should not be taken against them for the breach of the provisions of sections 2(33), 3, 6, 7, 16, 22, 23, 26 and 49 of the Sales Tax Act. The Deputy Collector (Adjudication) decided the case vide his impugned consolidated order-in-original wherein he inter alia decided the case against the said taxpayer and asked them, to pay the sales tax along with the additional tax in terms of section 34 and he also imposed penalties equivalent to 1.5%, 5%, 10% and 5% of the tax involved in terms of sections 33(2)(a), 33(2)(cc), (33)(3)(b) and 33(7) of the Act. He also imposed a penalty of Rs.50,000 on the Chief Executive of the Taxpayer in terms of section 33(6) of the Act. It was argued on behalf of the Taxpayer that the show-cause notice, dated 25-5-2000 is time-barred in terms of the limitation under section 36(2) of the Act as most of the findings (except for portion relating to sale of old 3 automotive vehicles sold on 2-9-1998, 4-9-1998 and 10-10-1998) relate to a period prior to 26-5-1997. As regards insurance claim and write-off value, it was stated that these are not taxable activity of the Taxpayer . As regards sale of old and used machinery (as scrap), and other assets. it was argued that these constitute sale of fixed assets and are not taxable in terms of the judgment of the Hon'ble High Court of Sindh in the case of Novartis . Where as the learned D.R opposed the appeal and argued that scope of taxable activity and supply of taxable goods as result of ancillary processes are to be deemed to be taxable supply has to be examined in the light of the judgment of the Hon'ble Supreme Court of Pakistan in the case of M/s Sheihhoo Sugar Mills and others v. Government of Pakistan 2001 SCMR 1376 = 2001 PTD 2097. The learned Tribunal after hearing both the sides and after perusal of record held in respect of write off of value of office equipment and insurance claim that same were not taxable as there was no actual supply. It further held that sale of fixed assets are also not a taxable activity in terms of judgment of Hon'ble High Court of Sindh in the case of Novartis and various other decisions of Tribunal. However it held that sale of old and used machinery as scrap are taxable. It also held that show cause notice as barred by time. The learned Judicial member agreed in respect of allowing the appeal, however disagreed in respect of finding on transaction of sale of old and used machinery sold as scrap as taxable. The observations are reproduced in extenso for better understanding -

> "(10) Though I agree with my learned Member Technical in allowing the appeal, I was to add a note of my own as I am unable to agree with him on the point of the chargeability of tax on the supplies of old and used machinery and air-conditioner of commercial size. In the opinion of the learned Member Technical, supply of the old machinery which was not useable as machinery and was sold as scrap was taxable due to the change of PCT heading from that of machinery to that of scrap and the supply of old air-conditioner of commercial sale was taxable, as input tax on it was admissible. In this regard, it may be observed that after brining trading into the net of sales tax, change of PCT heading has no relevance to the chargeability of tax. It was relevant when only manufacturing was within the scope of the tax. In the case of Collector of Customs, etc. v. Novartis Pakistan Ltd. reported in 2002 PTD 976 a Division Bench of the High Court of Sindh has clearly held that supply of fixed assets was not taxable when the registered person was neither trading in nor manufacturing such goods. For the purpose of charging sales tax under section 3(1)(a) of the Sales Tax Act, 1990, the supply must be in the course of furtherance of any taxable activity carried on by a registered person. Since the appellant was neither trading in nor manufacturing the machinery or the air-conditioner supplied by it, tax cannot be charged on such supplies, simply because the machinery was not useable as such and was as scrap and that the adjustment of input tax on the air-conditioner was admissible. Admissibility of deducting input tax

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		from the output tax is a sort of rebate permissible under certain conditions. According to section 8 ibid. Adjustment of input-tax is not admissible if the goods on which it is paid are used or to be used for any purpose other than for the manufacture of production of taxable goods or taxable supplies made or to be made by registered person or the Federal Government by a notification specify the goods disallowing the input adjustment. It is thus clear that admissibility or otherwise of input tax adjustment has nothing to do with the chargeability of tax. Deduction of input tax from output tax is a right given to a registered person provided the same is not disallowed under section 8 ibid. As indicated by item 60 of the Sixth Schedule of the Sales Tax Act, 1990, introduced by the Finance Act, 2003, non-availability of input-tax adjustment is a ground for exemption of tax and not for its non-levy.(9). Since we both agree in allowing the appeal on the point of the show-cause notice being time-barred, there is no need to make reference under section 194-C(5) of the Customs Act, 1969 read with section 46 of the Sales Tax Act, 1990 and the appeal is accordingly allowed."	
2005 PTD (Trib) 1349	Sec 2 and 3 of the Sales Act, 1990	Brief facts of the case are that it was observed by the Departmental authorities during scrutiny of records of taxpayer that they had sold their product on installation basis from company owned show rooms. However, the markup charged against installment sales has not been included in the `value of supply' for the purposes of assessment of sales tax as required under section 2(46)(a) of the sales tax Act, 1990 read with Sales Tax general Order 4 of 1997 relating to Board's ruling on inclusion of mark-up against credit sales in the value of supply for sales tax. It was alleged that tax has not been paid by the Taxpayer on the spare parts supplied free of cost against warrant claims. Additionally penalty and additional taxes were claimed to be payable by the Taxpayer. The Taxpayer was called upon to show cause as to why sales tax and additional tax should not be recovered from them beside other penalties as envisaged under the aforementioned law. In consequence of Adjudication, the learned Collector of Customs, Sales Tax and Central Excise (Adjudication), Karachi passed the order which was challenged before the learned Tribunal. The Taxpayer took inter alia following arguments and grounds. (a) that the show cause dated 26.4.2003 was time barred in as much as the same was issued for the period of short payment of sales tax pertaining to the years, 1998-99 to 2001-2002 and the period of 3 years for issuance of show cause expired on 25-4-2000, as such for all the transaction prior to 25-4-2000 no short recovery can be made good in terms of section 36(2)of the Sales Tax Act, 1990. This proposition of law is based on the dictum laid down in superior Courts that when a show cause notice is issued without any proper allegation as to a deliberate attempt, or collusion then it would be presumed that the same has occurred due to inadvertence, error or misconstruction on the part of taxpayer and the limitation period of subsection (2) of section 36 will be applicable. It is also a settled proposition of law that a notice under sub-section (1) of section 36 (wherein a longer period of limitation of 5 years has been provided) must contain the allegation of collusiveness and without such allegation the notices would be defective and against law. Therefore it was argued that in the instant case as there is no specific allegation in the show-cause notice and merely the provisions of section 36 have been incorporated without any subsection, the limitation period expired on 25-4-2000 and no recovery can be made for transaction beyond this period. (b) Mandatory condition of Sub-Section (3) of Section 36 has not been fulfilled.	

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(c) In view of objection, the jurisdiction was vested with the Deputy Collector of Sales Tax (Adjudication) by virtue of powers vested under section 45(iii) of the Sales Tax Act, 1990 and not with the Collector of Sales Tax (Adjudication). Therefore, all the acts done by the Collector of Sales Tax (Adjudication) including the issuance of show-cause notice and passing of the impugned order are without jurisdiction, without any lawful authority and liable to be set aside on the basis of dictum laid down by the Hon'ble Supreme Court of Pakistan in the judgment reported as reported as PLD 1971 Supreme Court 124 in the case of Mansab Ali v. Amir and others.

(d) That even otherwise the impugned order could not have been passed by learned Collector as according to section 45B(1) of the Sales Tax Act, 1990 the orders passed by the officers below in rank to Additional Collector (that is the Deputy Collector) are appeal able before the Collector (Appeals) and for this purpose the Collector (Adjudication) has been appointed as Collector (Appeals) also, as such by passing the impugned order the learned Collector (Adjudication) has deprived the appellants one stage of appeal before the Collector (Appeals) which is illegal, mala fide, and liable to be set aside on this ground alone.

(e) The departmental authorities have not appreciated the provision of Section 2(46) in respect of sale made on installment basis and that the Sales Tax is chargeable on the basis of section 3 which is the charging section and the basic ingredients of section 3 are that there must be a taxable activity to effect a taxable supply and if any of these ingredients are missing then there cannot be any activity which would come within the ambit of section (3) of the Sales Tax Act, 1990. Since selling of motorcycles by charging mark up for deferred payment is not the principal activity of the appellant as such it cannot be termed as taxable activity and will be out of the ambit of the charging section 3 of the Sales Tax Act, 1990.

(f) That case of the Appellant is covered under sub-section (c) of Section 2(46) according to which if for some reason the value of supply is not determinable then considering this a special transaction the open market price will be the value of supply and in the instant case the appellants have charged and paid sales tax on the basis of the open market price. This can be further substituted by the perusal of invoice.

(g) That SGO 4 of 1997 was not binding on the authority functioning as quasijudicial authority as held by Hon'ble Supreme Court

(h) That amendment made in Section 2(46) was beneficial and thus retrospective in nature and same has benefited leasing and banking companies.

(i) That the department has in fact failed to appreciate the factual position and the way the appellants are functioning. The appellants perform two functions, firstly it is selling motorcycles by paying proper sales tax, and secondly, it is providing funds to its consumers and charging them interest/mark up from them. Since no sales tax is payable on charging interest as such the appellants are not paying the same. Further it is also pertinent to note that these funds are provided to the customers from the borrowed funds and the markup so charged from the customers in fact is to cover the interest payable on those borrowed funds and has got nothing to do with the price/value of the motorcycles which is very distinctively shown in the sales invoice and that is why no sales tax is being charged or paid on the markup or interest being charged from the customers. It is further submitted that according to their

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		knowledge no leasing/banking company has ever paid sales tax on markup and interest, therefore this also amounts to discrimination and is violative of Articles 4 and 25 of the Constitution of Pakistan (1973).	
		(j) That in so far as the second allegation of the department is concerned it was submitted that the initial sale of motorcycle is under warranty for a certain period with a condition to replace defective parts free of cost and subsequently when there are any claims from customers the parts are replaced free of costs and such replacement are either done from the imported parts or from the vendors who had supplied those parts and in terms of contracts were bound to replace them if the same were found defective. Therefore in this situation this does not amount to taxable supply within the ambit of section 3 of the Sales Tax Act, 1990 and no sales tax is payable on such free of cost supplies. The Departmental Representatives supported the orders passed by them. The learned Tribunal after considering the submissions and record observed that the appellant is selling Motorcycles to the general public and in certain cases also provides funds as loan to some of his customers for the purpose and has been charging mark up on these loans. It was observed that the department has relied upon the definition of value of supply and is demanding sales tax even on this mark-up. In order to resolve the issue, the learned Tribunal examined the provisions Section 2(46) (Value of Supply), Section 2(41) (Taxable Supply) , Section 2(39) (Taxable goods) and Section 2(21) (Goods) It was therefore observed that money has been excluded from the definition of goods and hence the money supplied in shape of loan would not constitute a taxable supply and similarly mark-up received in respect of this supply would not be taxable. The learned Tribunal was of the view that the mark up is related to cover the interest of the loan and is not related to the price of the Motorcycles. It was further observed that the sales invoice of the appellant also shows that the value of Motorcycle and mark up in a distinctive manner. Thus mark up is not related to the value of Motorcycle should not be subjected to tax. The learned Tribunal further observed and took notice of amendment made through Finance Ordinance, 2001 in Section 2(46)(a) and observed that it further supports their reasoning. It was observed that it should be given retrospective effect being beneficial legislation. Reference was made to the judgment of Hon'ble Supreme Court reported as 1993 SCMR 73. The appeal of the appellant was therefore allowed. So far as second issued is concerned the learned Tribunal after examining the provisions of Section 8 held that plea of the Taxpayer that the free of tax supply was made as replacement parts to the customers during the warranty period and that it was also included in the value of Motorcycle; thus these parts were already sales tax paid. was not tenable in law.	
2005 PTD (Trib) 1358	Sec 2, 8, 33 of the Sales Tax Act,1990	In this case it was alleged that appellant had adjusted an amount on electrical bills for the period from July, 2002 to November, 2002 and April, 2003 to June, 2003, but during that period no production activity was carried out. In the same way appellant had adjusted input tax on Electricity Bills consumed in office area during the period from December, 2002 to March, 2003 in violation of section 8 of Sales Tax Act read	

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		with S.R.O. 124(I)/2000, dated 15-3-2000. Therefore, department was of the view that electricity consumed in office area also during off season cannot be taken as taxable activity. On the basis of this very analogy learned adjudication officer observed that appellant is not entitled to claim input tax adjustment for the relevant period. The learned Tribunal analyzed Section 8 and observed that Section 8 of Sales Tax Act is relevant, which speaks about the entitlement of input tax claim. It says that a registered person is entitled to claim or deduct input tax on the goods used or to be used for the manufacture and production of taxable goods or supplies. It further observed that the essence of term ``manufacture'' as used in the Act mean the changing of one object into another for the purpose of making it marketable. In the same way the term production appears to contemplate some expenditure of human skill and labour and other connecting aspects and activity spent in bringing the goods to brought them to the state in which they may become fit for consumption. It was observed that so in conjunction with this explanation all factors and items, whatsoever, are used and to be used are integral part of that manufacturing process and cannot be separated merely on the ground that it was used in off Season. It was for the reason that to run a factory in satisfactory and good condition its maintenance and ever grooming is a fundamental aspect, without which, a good production cannot be expected. It was therefore held that that input adjustment made by appellant was in association with section 8 of Sales Tax Act and the said consumption of electricity by appellant even in off season was a integral process of manufacturing and production of taxable goods. As such relevant charge leveled in Show Cause Notice was vacated.	
(2005) 92 Tax 28 High Court Lahore	46 of the Sales Tax Act, 1990	In this case Hon'ble High Court of Lahore has held that while deciding the appeal under section 46(4) of the Sales Tax Act, 1990 the learned Tribunal was empowered to pass any such order as it thought fit. Such a view reducing /altering the penalty taken by the learned Tribunal in exercise of its discretionary jurisdiction would hardly call for interference by the Court particularly when no question of law as contemplated by section 47 of the Sales Tax Act, 1990 arises in the matter.	
2005 SCMR 1166 2005 PTD 1933 Supreme Court of Pakistan	Sec 38,40,40A of the Sales Tax Act,1990	It will be recalled that the Hon'ble Supreme Court of Pakistan in case reported 2003 PTD 1034 had interpreted the scope of Section 38, 40, 40-A of the Sales Tax Act in respect of search by the Departmental Officers and free excess to Business or Manufacturing premises and records. In this case, also similar issue has been elaborated. (Learned members are requested to go through the entire judgment for better under-standing of the interpretation made by the Hon'ble Supreme Court of Pakistan).	

WEALTH TAX

(2005) 92 Tax 14 (Trib)	17 of the Wealth Tax Act, 1963	In this case it has been held that where assessment has already been completed provisions of Section 17(1)(b) would be applicable and not the provisions of Section 17(1)(a). It was further held that once it is held that there was violation of mandatory condition of law, the case has to be annulled not set aside.	
2005 PTD 2020 High Court Lahore	Rule 8 of the Wealth Tax Rules,1963	In this case, it has been held by the Hon'ble Court that for the purposes of valuation of Shares under Rule 8(2)(c)(ii) of the Wealth Tax Rules, 1963, that said rule does not prohibit exclusion of provision fro taxation. It has been observed that the rule only requires the Assessing officer that a provision for liabilities in the balance sheet should be carefully scrutinized with a view to exclude therefrom items which should	

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		really form part of reserves. In other words the reserves are to be included in the paid up capital, while computing valuation per share. Howeverever, the provision's for liabilities are to be excluded with only rides that the Assessing Officer will examine them on case to case basis in order to see if these provisions really form part of reserves or are required to be taken as part of liabilities,	
2005 PTD (Trib) 454	Sec 2(24), 16(3) & 17 of the Wealth Tax Act, 1963.	In this case, it has been held by the learned Tribunal that for the purposes of Wealth Tax Assessment, the valuation date is important, which has a direct nexus with the valuation of the property.	
2005 PTD (Trib) 860	Sec 16(2) of the Wealth Tax Act, 1963.	In this case, the learned Income Tax Appellate Tribunal has reiterated the legal position that notice under Section 16 (2) was mandatory and the assessment framed without full filling the same would make the assessment illegal.	
2005 PTD (Trib) 523	Sec 16(3) and Rule 8(3) of the Wealth Tax Act, 1963	In this case, it has been held by the learned Tribunal that hire charges of neon sign boards are including in the annual rental value under Rule 8 (3) of the Wealth Tax Act, 1963 for the purposes of valuation of the property. In the same case, it has been held that an Association of Persons was not liable to file Wealth Tax return for the Assessment Year 1997-98 as through Finance Act, 1996 the same were omitted from Section 3 and re-introduced by Finance Act 1997.	
2005 PTD 582 High Court of Sindh	Sec 35 of the Wealth Tax Act, 1963	In this case, the Hon'ble High Court of Sindh has interpreted the scope of Section 35 (Rectification of mistakes). It has been held by the Hon'ble High Court that from the language of Section 35 of the Wealth Tax Act, 1963, amplified with various decisions, discussed above, it is clear that the power of rectification provided under this provision of law is much wider than the power of review conferred upon the ordinary Courts and that such power of rectification need not be confined to mere correction of arithmetical mistake / mistakes of calculations or obvious mistake on record but it could also be exercised in the cases of glaring illegalities or failure to follow the relevant precedents. It was observed that at the same time, it is to be kept in mind that the scope of rectification cannot be extended in a way so as to empower an officer to set aside its own order or to modify it as if sitting in a Court of appeal. As has been held by the Supreme Court in the case of National Food Laboratory and also in the case of Sheikh Muhammad Iftikhural Haq Vs. Income Tax Officer, Bahawalpur PLD 1966 SC 524, the mistakes which are not apparent and obvious on the record cannot be termed to be mistake which can be rectified in exercise of power under Section 35 of the Act. More particularly those mistakes which do not surface from the record but need further investigation to reach to a definite conclusion. To say it in other words, while exercising power of rectification, envisaged under Section 35, an officer cannot enter into investigation of factual controversies nor can he investigate into a matter, which may require additional evidence for that purpose.	
(2005) 91 TAX 208 High Court Lahore	CLAUSE 7(i) & (ii) of the Second Schedule to the Wealth Tax Act, 1963.	In this case, the assessee claimed exemption of Foreign Remittances which were received by the husband of the assessee. Normal assessment was made in which claim of the assessee was accepted. Action under Section 17 B was taken by the learned IAC, who was of the opinion that exemption was not available to the assessee. The action u/s 17B was also approved by the learned Tribunal. The matter was contested before the Hon'ble High Court where their lordships held that after examination of Clauses (i) and (ii) of Clause 7 of the Second Schedule to the Wealth Tax Act, 1963 it is found that the opening part of clause (7) of the Second Schedule makes it clear that these two sub-clauses (i) and (ii) encompass two different situations. The principle however, remains the same that exemption is relatable to the assets and not to the assessee, as such, in the first sub-clause the assets brought or remitted by an assessee into Pakistan or received by him `from outside Pakistan are exempted for five years starting from the year in which they were brought, remitted or	

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		received. It was observed that the case of the assessee 'obviously is not covered by sub-clause (i) which was again wrongly thought to be so by the revenue authorities as well as by the learned members. The sub-clause (ii) talks of creation of assets by an assessee "out of remittance received in or brought into Pakistan through normal banking channel" during and for the period referred to in sub-clause (i). Sub-clause (ii) without any iota of doubt visualizes a situation different from sub-clause (i). According to this sub-clause any asset created by an assessee is entitled to enjoy exemption subject to the only condition that it was created out of remittances received in or brought into Pakistan through normal banking channels. This sub-clause does not speak of the recipient of the remittance at all. The only condition being that the remittances were received or brought into Pakistan through normal banking channels.	
2005 PTD (Trib) 937	Sec 16 and Clause (3) of Second Schedule to Wealth Tax, 1963	In this case, assessee's share in the agricultural land was assessed to Wealth tax against the claim of exemption as according to the assessee, the land was under cultivation as such was exempted from levy of wealth tax. The first Appellate authority to resolve the controversy whether the share of the assessee in the land was chargeable to wealth tax or not constituted a committee consisting of the concerned Assessing Officer, Income Tax Inspector of learned Commissioner of Income Tax (Appeals) office, assessee in person and counsel of the assessee. The committee recorded their findings that the land was agricultural land and assessee's share in the said land was directed to be accepted as agricultural land. On the basis of findings of the committee, learned Commissioner of Income Tax (Appeals) accepted the claim of exemption. The department challenged such order before the learned Tribunal. In the Appeal before the Tribunal, the department did not challenge the finding recorded by the committee, but took the plea that the land was purchased for the purpose of non-agricultural use and in the case of other co-owner, the chargeability of wealth tax was not challenged. The learned Tribunal did not appreciate the contention of the department for the reason firstly that assessing officer who made the assessment was a member of the committee who had made spot inquiries alongwith other members of the committee and had found that the assessee's contention was correct that the land was agricultural land. The learned Tribunal also depreciated the contention that the co-owners did not contest the charge of the tax and held that unchallenged wrong done by another co-owner can not be made basis by the department for adversely effecting the assessee.	
2005 PTD (Trib) 860	Sec 16 of the Wealth Tax Act, 1963	In this case, the learned Income Tax Appellate Tribunal has reiterated the legal position that notice under Section 16(2) was mandatory and the assessment framed without full filing the same would make the assessment illegal.	

FEDERAL TAX OMBUDSMAN

2005 PTD 1915	Sec 59 of the Repealed Ordinance	In this case, Assessee's return for Assessment Year 2002-03 was excluded from the purview of self Assessment scheme on the ground of furnishing short document in pursuance of notice issued by Departmental authority. A complaint was filed before the Federal Tax Ombudsman on the ground that complainant never received notice of short document as alleged by Departmental Officer and as such, exclusion of the complainant's return was illegal and constitutes mall administration. The contention of the department was that notice for short document was sent through UPS and said notice was not received back undelivered and implied that said notice has been served on the complainant and complainant failed to comply with the terms of notice. As such, assessment proceedings under normal law were initiated correctly by the Departmental Officer and mall administration was denied. The Hon'ble Federal Tax Ombudsman after examination of the record observed that the dispatch of short document notice through UPS does not required signature of the addressee for	

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		receipt of the post and does not provide that short document notice was served on the complainant. Further it was found that the department failed to produce any valid evidence that the case was excluded from self assessment scheme by the Taxation Officer by passing a speaking order as required under Para 8-C of Central Board of Revenue Circular No.7 of 2002 within 15 days of the prescribed time. It was, therefore, held that mall administration of incompetence was evident from invalid service of the mandatory notice and arbitrary conduct for not paying attention to the objections of the complainant to initiate assessment proceedings under normal law. The preliminary object of the department that Federal Tax Ombudsman has no jurisdiction as complaint relates to assessment proceedings for which remedy has been provided was rejected by observation that the issue involved in the complaint relates to exclusion of the return from self assessment scheme which is an administrative decision for which no Appeal, Revision, or Review is provided. It was, therefore, recommended by the Hon'ble Federal Tax Ombudsman that Taxation Officer should accept the return of the complainant under Section 59-A of the Income Tax Ordinance, 1979 after obtaining statement of receipt and expenditure statement.	
(2005) 91 Tax 339 FTO		In this case complainant filed information before the Office of RCIT about certain persons who have acquired properties or were running prosperous business but were evading taxes. The complaint submitted application before the Hon'ble Federal Tax Ombudsman for the reason that no action was taken on the information. The said information shown to have been received by the office of RCIT. The departmental officer denied of having received information from complainant, however it was stated that they have received a complaint from Central Board of Revenue which was sent to CIT for necessary action. Certain files and informations required by the Hon'ble FTO were also not submitted during the course of proceedings, however same were submitted subsequently. It was found by the Hon'ble FTO that veracity of acknowledgment of complaint in the office of the RCIT has not been disputed. It was also observed that there was indifferent attitude and overall picture supports suspicions of a collusion and attempt to cover up, alleged by the Complainant. The lapses identified above betray "neglect, inattention, delay, incompetence and inefficiency in the administration or discharge of duties and responsibility" falling in the category of "maladministration" as defined in clause (3) of section 2 of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000. It is, therefore, recommended that :- (a) The person who received the complaint and misplaced it, be identified and subjected to action under the Removal from Service Ordinance, 2000 as amended in 2002. (b) The officers responsible for delay in the office of RCIT and the office of the CIT, Zone-C, Lahore be identified and subjected to `warning', copies of which be placed on their Performance Evaluation Reports (old ACRs). (c) Copy of information submitted by the complainant as admittedly received from the CBR be processed and the outcome communicated within 30 days of the receipt of this order.	

CORPORATE

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2005 CLD 1034	305 & 309 of the	In this case, the said Company was directed to be wound up by the learned Company	

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Supreme Court of Pakistan	Companies Ordinance, 1984	Judge, which was challenged before the Hon'ble Supreme Court of Pakistan wherein an statement was made on behalf of the Bank that Company has adjusted all its liabilities with the Bank and leaving nothing outstanding against the appellant company. It was contended by the Company that from the date of the impugned order till the stay granted by the Hon'ble Supreme Court of Pakistan, nothing had happen during such period in respect of companies financial affairs and not transaction what so ever was done during such period. In other words, it was submitted that companies financial rights and obligation remained the same and therefore submissions were made that winding up order of the company is liable to be set aside. The Hon'ble Supreme Court of Pakistan observed that although the said assertion of adjustment of liabilities and financial affairs, there is nothing on record to substantiate, it is not clear whether other creditors of the company would be affected or not by restoring the previous status of the company. The Hon'ble Supreme Court, therefore, set aside the judgment and remanded the case to Hon'ble High Court to decide it fresh on merits regarding restoring the previous status of the company or otherwise after taking into consideration all the circumstances and also keeping in view the interest of those creditors of the company who are not party of the Appeal.	
2005 CLD 1208 High Court of Sindh	Sec 196 of the Companies Ordinance,1984 and Article 199 of the Constitution of Islamic Republic of Pakistan	In this case, a Private Limited Company filed Constitutional Petition before the Hon'ble High Court of Sindh wherein letter / notice issued by Employees Old Age Benefit Institution was assailed. The Respondents inter alia objected the maintainability on three ground which included the ground that person who had signed the Petition Managing Director was not authorized / empowered by the Board of Directors as such, the Petition is liable to be dismissed. Reliance was made to the Two Judgments of Hon'ble Supreme Court of Pakistan reported as PLD 1966 SC 684 and PLD 1971 SC 550. The Hon'ble High Court of Sindh after considering the facts of the case and the law led down by Hon'ble Supreme Court of Pakistan in the cases referred supra held that Petition was not maintainable. Since this judgment elaborates very important legal position in respect of filing / instituting legal proceedings on behalf of the Company incorporated under Companies Ordinance, 1984, the learned members are requested to read the entire judgment for better under-standing and compliance thereof.) (Learned members are also requested to read another judgment on same place reported as 2005 CLD 1330).	
2005 CLD 1029 SCEP Appellate Bench.	Sec 205 and 476 of the Companies Ordinance, 1984	Brief facts of the case are that the learned Executive Director (Enforcement and Monitoring) imposed fine under Section 205 of the Companies Ordinance 1984, which was challenged to be without jurisdiction on the ground that powers and functions of the Commission under different laws have been deleted to Executive Directors of the Commissions under SRO 323-I/2002 dated 14-6-2002 and it was argued that said SRO did not delegate the power under Section205 of the ordinance to the said Executive Director. It was further submitted that pursuant to Section 476 (1) (a) the power to impose fine under Section 205 was exercisable by the Officer Incharge of Registration Office in which the Company was registered. The case was also argued on merits. The learned Court observed that the Executive Director can exercise the power to impose fine under sub section (5) of Section 205, however, aforesaid provision has to be read with sub Section (1) of Section 476 of the Ordinance in respect of imposition of fine. Sub Section (1) of Section 476 stipulates it Officer / entity shall adjudge and impose the fine for any offence or default in complying with any provision the Ordinance, where a fine other than fine in addition to or in lieu of imprisonment is provided for such offence or default, which was observed under Section 476 (1) (a) wherein any contravention or default in complying with any provision of the Ordinance where the maximum fine provided is less than Rs. 5000/- and the daily fine is less than Rs. 200/-, the power to impose fine is to be exercised by the Officer Incharge of the Registration Office where the Company is registered. It was observed that as the fine provided under sub Section (5) is Rs. 500/- and the daily fine is Rs. 50/-, therefore, the power to impose this fine lies with Officer Incharge of the Registration Office where the company is registered and not Executive	

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		Direction (Enforcement and Monitoring). In view of the above, the fine imposed on the Appellants was set aside.	

CENTRAL EXCISE DUTY

2005 PTD 1325 2005 PTD 1361 High Court Lahore	Sec 4(2) of the Central Excises Act ,1944	In this case, it has been held that the determination of value for the purposes of duty, although Excise duty is a tax still was not includible in fixing the retail price,	
2005 PTD 1928 High Court of Sindh	Sec 4(2) of the Central Excises Act ,1944	In this case, the contention of Petitioner was that the Central Excise Duty payable is on the retail price fixed by the Petitioner inclusive of all charges and tax (other than sales tax levied and collected under Section 3 of Sales Tax Act) whereas the department contention was that duly payable is on the retail price inclusive all charges and taxes which includes Central Excise Duty as per Central Excise General Order No. XIV of 1969. The Hon'ble High Court of Sindh examined the issue with reference to the Section 4 (2) of the Central Excise Act and held that retail price to be determined under Section 4 (2) of the Central Excise Act, 1944 would be as fixed by the Assessee which would include all the charges / taxes (less Sales tax) and upon such retail price, Central Excise duty is to be determined.	

CUSTOMS

2005 PTD 1346 High Court Lahore	Sec 4 of the Customs Act, 1969	In this case, the assessee imported a consignment of refrigerators from Kuwait and on arrival Bills of Entry were filed by the assessee. The Custom authorities based their assessment on a Public Notice, thereby making assessment on the outer gross capacity rather than declared capacity. The Assessee after not being successful before appellate forums, filed appeal under Section 196 challenged the jurisdiction of the custom authorities on the basis of private enquiry based on said Public Notice. The Hon'ble High Court after examining the case observed that there can be no cavil with the proposition that all Tribunals, Judicial or Quasi Judicial, must conduct their proceedings in presence of the parties. It was observed that there is no concept that such Tribunal can, under the law, embark on private inquiries conducted behind the back of the party and base its decision on information obtained through such enquiry with which the party to the proceedings has had no opportunity to respond or rebut.	
2005 PTD 1964 High Court Lahore		In this case, the petitioner exported goods which were examined and assessed under Section 80 (1) of the Customs Act 1969 on the final basis, however, its entry was blocked in computer, which act was challenged before the Hon'ble Lahore High Court. The Hon'ble Court took notice of the judgment decided by Karachi High Court Sindh in 2004 PTD 369 where their lordships observed that if goods imported were apprised and assessed for Customs duty and taxes were duly deposited, the Customs authority was not entitled to retained them, although thy were at liberty to take appropriate action in accordance with law if they had adequate material for initiation of the proceedings under Section 32 of the Customs Act. The Hon'ble Lahore High Court agreed with the said judgment and directed the revenue authorities to immediately clear/release the goods on the payment of the duties / taxes already assessed and revenue authorities were given liberty to proceed in accordance with relevant provisions of the Customs Act if they are in possession of sufficient material to justify said proceedings.	
2005 PTD 1966 High Court of Sindh	19 & 31 of the Customs Act,1969	In this case, Petitioner filed the Constitutional Petition challenging the action of Customs authorities for not allowing the benefit of SRO 554/(I)/98 dated 12-6-1998 on their imported consignment which arrived at Port of Karachi in the month of April 2005. Said SRO stipulated arrival of the consignment on 31-3-2005. It was contended	

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		by the Petitioner that they have full filled all the requirements, however, for no fault of the petitioner, the goods arrived subsequent to cut of date in the said SRO and took plea that since the Government gave the scheme for economic reforms for the benefits of the Importers, they may be permitted to avail the benefit despite late arrival of the consignment. The Hon'ble High Court observed that the Government has taken steps to introduce incentives to the Importers for the promotion of the business and trade activities in the country and the said SRO may also be considered as step towards that goal, but their lordships held that for availing its benefit, strict compliance of all its terms are conditions precedent and no relaxation can be shown for that purpose. It was further held that irrespective of the fact, whether delay in arrival of consignment occurred due to fault of the Petitioner or otherwise, Petitioners were not entitled for the benefit of SRO and were liable to pay tax by virtue of provision of Section 32-A of the Customs Act.	

GENERAL LAW AND INTERPRETATION

2005 MLD 1724 High Court of Sindh	Rules of Interpretation of Statutes	It has been held by Hon'ble high Court of Sindh in respect of supply of principle of Casus omissus that clear provisions of law cannot be allowed to be brushed aside when the policy is spelt out by the codified law. It has been held that when it is apparent that the case falls within the purview of a statute, the question of supplying cases omissus or reading down of the provision of the statute would not be called for unless it is shown that such provisions are violative of the Constitution and a situation arises that such decision becomes necessary to save the enactment.	
2005 MLD 1700 High Court Lahore	Rules of Interpretation of Statutes	It has been held by Hon'ble Lahore High Court that it is established principle of interpretation that while interpreting certain provisions of law, the Court could not insert what legislature never intended to nor the court could sit in judgment over the authority of Legislature by interpreting such provision in a way which Legislature never intended to.	
2005 SCMR 1166 Supreme Court of Pakistan	Rules of Interpretation of Statutes	The Hon'ble Supreme Court has observed that every word used by the Legislature must be given its true meaning and the provisions construed together in a harmonious manner. It has been observed that it is not legal or proper to apply one provision of law in isolation from the other as no surplus age or redundancy can be attributed to the legislative organ of the State.	
PLD 2005 SC 819 Supreme Court of Pakistan	Estoppels	In this case, the Hon'ble Supreme Court of Pakistan has held that there is no estoppels against statute. It was further held that mere concession on a question of law by a party would not operate as an estoppels and that it is duty of the court to interpret and apply the law correctly regardless of any concession made by a party or its counsel.	
2005 PLD SC 842 Supreme Court of Pakistan	Jurisdiction	In this case, the Hon'ble Supreme Court of Pakistan has held that question of jurisdiction of a forum is always considered to be very important and any order passed by a Court or a forum having no jurisdiction even if it is found to be correct on merits is not sustainable in law. It was also observed that jurisdiction of a court lays down a foundation stone for a judicial or quasi judicial functionary to exercise its power and authority and no sooner the question of jurisdiction is determined in negative, the whole edifice, built on such defective proceedings, is bound to crumble down.	

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2005 PCR.L.J 1599 High Court of Sindh	Crime and Punishment Duty of the Court	In this case, Hon'ble High Court of Sindh has held that in the cases pertaining to crime and punishment, courts are supposed to administer justice and not to sit with vindictive attitude. Such conduct is highly deprecated and that the Trial courts must not be swayed by emotions while passing the judgment and should always act within the parameters of the law.	
2005 SCMR 1388 Supreme Court of Pakistan	Jurisdiction	The Hon'ble Supreme Court has held in this case that jurisdiction cannot be conferred on a forum even with the consent or acquiescence of a party.	