

E-News & Views

NV # 02/2021

2021

A Publication of KTBA April 2021 to June 2021

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

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FROM THE DESK OF THE PRESIDENT



My Dear Members,

Assalam-o-Alikum and Greetings!

The 2nd Edition of E-News & Views covers the period from April 2021 to June 2021. We have tried to regularize this publication for which all the credit goes to Ms. Raeel Fatima and her team. As always this edition covers Circulars, SROs and gist of some important Case Laws of both Direct and Indirect Taxes.

COVID-19 has changed the way we used to live and work, however, publications like these helps us to navigate the important notifications and updates relating to Federal Board of Revenue. I would request you all to go through our publication and would also like our readers to suggest about changes (if any) for improvement.

In the end, I would once again like to thank the entire team and hope that this Sub-Committee will ensure fresh issues of this publication on regular basis.

Yours in service,

Muhammad Zeeshan Merchant

FROM THE DESK OF THE CONVENER



Dear Fellow Members,

It gives me immense pleasure to present you the second publication of E-News & Views of this Committee.

It was only the coordinated and concerted team efforts enabling this Sub-Committee to complete the publications of 2nd Quarter of this Calendar Year 2021.

We have compiled in this issue, Circulars, SROs and General Orders concerning revenue laws of the Country issued from April, 2021 till June, 2021.

This publication also covers circulars and notifications issued by Sindh Revenue Board, Punjab Revenue Authority, Baluchistan Revenue Authority, Khyber Pakhtunkhuwa Authority & Securities & Exchange Commission of Pakistan. In addition to aforesaid, the important PTD case laws dealing with Sales-tax, Federal Excise and Direct Tax which are great assets to our profession are also the part of this publication.

At last, I thank all the committee members for extending their valuable time in publication of this edition for their sparkling efforts and their belief in the excellence.

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

Yours in service,

Raeel Fatima

DIRECT TAX CIRCULARS AND SROs

Direct Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
01 of 2022	June 30, 2021	Circular No. 1 of 2022 - Operations (Inland Revenue)
02 of 2022	June 30, 2021	Finance Act, 2021 - Explanation of important amendments made in the Income Tax Ordinance, 2001

Direct Tax SROs

SRO REFERENCE	DATE	SUBJECT
453(I)/2021	April 06, 2021	Exemption from income tax under clause (75) of Part-1 of the Second Schedule to Income Tax Ordinance, 2001
99(I)/2021, 132(I)/2021, 235(I)/2021	May 16, 2021	Corrigendum to S.R.O. No.99(I)/2021 dated the 26th January, 2021 , S.R.O. No.132(I)/2021 dated 3rd February, 2021 and (S.R.O. No.235(I)/2021 dated 23rd February, 2021
428(I)/2002	May 23, 2021	Corrigendum of Income Tax Rules, 2002
589(I)/2021	May 24, 2021	Amendment in Second Schedule of Income Tax Ordinance, 2001
636(I)/2021	May 30, 2021	Draft amendments in Income Tax Rules, 2002 - Procedure for E-Audit
639(I)/2021	May 31, 2021	Draft amendments in Income Tax Rules, 2002
730(I)/2021	June 10, 2021	Draft Income Tax Return Forms for Salaried Persons, AOPs, Business Individual and Companies for Tax Year 2021
801(I)/2021	June 23, 2021	Capital losses on disposal of securities
849(I)/2021	June 28, 2021	Insertion of 19H application of this rule
835(I)/2021	June 28, 2021	Insertion of a new rule 231FA - Procedure for E-Audit
853(I)/2021	June 30, 2021	Income Tax Return Forms for Salaried Persons, AOPs, Business Individual and Companies for Tax Year 2021

Indirect Tax CIRCULARS AND SROs

Indirect Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
02 of 2021	June 30, 2021	Finance Act, 2021 - Explanation of important amendments made in the Sales Tax Act, 1990 & Federal Excise Act, 2005

Indirect Tax SROs

SRO REFERENCE	DATE	DESCRIPTION
807(I)/2021	June 25, 2021	Change in Sales Tax Rates on Petroleum Products
750(I)/2021	June 13, 2021	Change in rate of Sales Tax on Petroleum Products
726(I)/2021	June 07, 2021	Change in rates of Sales Tax on Petroleum Products
725(I)/2021	June 07, 2021	Reduction in rate of Sales Tax on Takeaway from Restaurants
590(I)/2021	May 24, 2021	Exempt the import of Oxygen gas, Cylinder, Cryogenic Tanks for Oxygen Gas from the whole of Sales Tax
551(I)/2021	May 08, 2021	Change in Sales Tax Rates on Petroleum Products
465(I)/2020	April 06, 2021	Amendment in SRO 1301(I)/2018, dated 29-10-2018

Indirect Tax Circulars – SRB

CIRCULAR NO.	DATE	SUBJECT
C.NO. 1(10)ST-LP&E/2020/66012-R	May 25, 2021	Clarification Regarding Adjustment of The Liabilities of WWF and WPPF Against Refunds Of Income Tax
No. SRB/TP/05/2021	May 17, 2021	Extension in the last date for E-Deposit of Sindh Sales Tax for the Tax Period April, 2021 and for E-Filing of Tax Return
ERD/M&PRD/PR/01/2021-70	June 28, 2021	Opening of Branches of Facilitate the Collection of Government Receipts/ Duties/ Taxes on June 30, 2021

Indirect Tax Notifications – SRB

NOTIFICATION ORDER NO.	DATED	SUBJECT
SRB-3-4/06/2021	April 08, 2021	Transfers and Postings in SRB ----- Amendments in Notification No.SRB-3-4/24/2020 Dated July 03 rd , 2020
SRB-3-4/07/2021	April 16,2021	Transfers and Postings in SRB ----- Amendments in Notification No..SRB-3-4/24/2020 Dated July 03, 2020
Ministry of Defence, Islamabad's U.O.No. 6/26/2020-21/D-21 (Budget) dated 31-03-2021	April 19, 2021	Creation of "Rt Code Head" and "Ch. Code Head" No. 0/003/14 and No. 0/003/14, respectively, for deduction/deposit of amounts of Sindh Sales Tax relating to receipt/procurement/provision of taxable services by Defence Departments/Establishments/Organizations
SRB-3-4/9/2021	April 29, 2021	Notification Appointing Mr. Zamir A.Khalid to be a Commissioner (Appeals), SRB, in the Appeal Case No. 01/2018 Filed by M/s Harbin Power Engineering Complaint Ltd. (SNTN: S0816461)
SRB-3-4/11/2021	May 31, 2021	Sindh Workers Profits Participation Fund (SWPPF) Incentive Scheme envisaging waiver/remission of penalties, interest and default surcharge in case where the principal amounts of arrears of SWPPF (outstanding as on 31-05-2021) are paid by the respective specified dates in the month of June, 2021.
SRB-3-4/10/2021	May 31, 2021	Sindh Workers Welfare Fund (SWWF) Incentive Scheme envisaging waiver of penalties and remissions in the payment of additional amount/default surcharge in case where the principal of arrears of SWWF (outstanding as on 31-05-2021) are paid by the respective specified dates in the month of June, 2021.
SRB-3-4/8/2021	May 31, 2021	Sindh Sales Tax Incentive Scheme for liquidation of arrears outstanding as in 31-05-2021 if the principal amount of Sindh Sales Tax is e-deposited by the respective specified dates on the month of June, 2021.
SRB-3-4/12/2021	June 10, 2021	Transfers and Postings in SRB ---- Amendments in Notification No. SRB-3-4/24/2020 Dated July 03 rd , 2020
SRB-3-4/19/2021	June 30, 2021	Time-bound reduction (from 8% to 5%) in the rate of tax on the services provided by recruiting agents in relation to recruitments for employment.
SRB-3-4/18/2021	June 30, 2021	Extension of Exemption Period upto June 30, 2022 in relation to the stand alone cable TV Operators? Services
SRB-3-4/17/2021	June 30, 2021	Extension of Exemption Period upto June 30, 2022 in relation to the Health Insurance Services
SRB-3-4/16/2021	June 30, 2021	Amendment in the Sindh Sales Tax Special Procedure (Transportation or Carriage of Petroleum Oils through Oil Tankers) Rules, 2018
SRB-3-4/15/2021	June 30, 2021	Amendments in the Sindh Sales Tax on Services Rules, 2011

SRB-3-4/14/2021	June 30, 2021	Amendments in Notification No. SRB-3-4/8/2013 Dated July 01, 2013
SRB-3-4/13/2021	June 30, 2021	Amendments in Exemption Notification No. SRB-3-4/7/2013 Dated June 18, 2013. Export of Call Centre Services Exempted

Indirect Tax Circulars – KPRA

CIRCULARS ORDER NO.	DATED	DESCRIPTION
F.No. 7(2) / KPRA/ ADC (HQ) / CIRCULAR / 2019/ 633	May 17, 2021	Extension in Date of Payment of Sales Tax & Submission of Return for the Period April, 2021

Indirect Tax Notifications – KPRA

Notification Order No.	Dated	Description
F.No.KPRA/opt to Standard Rate/2020/625	April 28, 2021	Permission to operate under Standard Rate of Tax (15%) in terms of section 26-A of the KP Finance ACT-2013
No.KPRA/Clarification/ ADC (HQ)/635	May 19, 2021	Clarification on Admissibility of Tax paid Under Section 20 of the KP Finance Act, 2013
No.KPRA/Admin/Notifications/2019/3197-3200	May 24, 2021	KPRA Headquarters and its regional offices shall remain open on Saturday till 30th June 2021

Indirect Tax Notifications – BRA

NOTIFICATION ORDER NO.	DATED	DESCRIPTION
PAB/Legis:V(08)/2021/3372	April 12, 2021	BIDC ACT 2021
BRA/STA&A/20-21/427	April 22, 2021	Extension in date for submission of Sales Tax on services return in BRA the tax period March 21
BRA/STA&A/20-21/447	May 07, 2021	Extension in date for payment and submission of Sales Tax return for the Tax period of April 2021
BRA/BDMIC/01/2020-21	June 30, 2021	Exemption NIGA BDMIC 2021

Indirect Tax Notifications – PRA

NOTIFICATION ORDER NO.	DATED	DESCRIPTION
PRA/Orders.6/2021/36	April 28, 2021	Notification Rules - No. PRA/Orders.06/2021/36
PRA/Orders.6/2021/40	May 06, 2021	Extension in Return Filing Date Till 21st May 2021

CIRCULARS ISSUED BY SECP

CIRCULAR NO.	DATE	DESCRIPTION
7 of 2021	April 08, 2021	Collective Investment Schemes Investments in exchange traded equity future contracts
9 of 2021	April 08, 2021	Policy for Gender Diversity to be prepared at Board Level by the Non-Bank Finance Companies (NBFCs)
12 of 2021	April 12, 2021	Investment And Allocation Policies for Pension Funds
14 of 2021	June 02, 2021	Guidelines for Mutual Fund Digital Distribution Platform
17 of 2021	June 11, 2021	Clarification on Investment in Units Of Exchange Traded Funds out of Provident Fund or any other EETF out of provident or other employee contributory retirement fund
16 of 2021	June 18, 2021	Requirements for Asset Management Companies (AMCs) to Advertise Open End Collective Investment Schemes (CIS)
19 of 2021	June 25, 2021	Investment in Units of Unlisted Privately Placed REIT Schemes by Equity Oriented Collective Investment Scheme
20 of 2021	June 24, 2021	Minimum Requirements for Exchange Traded Funds to be Managed by Asset Management Companies

Notifications Issued By SECP

NOTIFICATION NO.	DATE	SUBJECTS
284(I)/2021	April 02, 2021	The Modaraba Regulations, 2021
282(I)/2021	April 02, 2021	Delegation of Powers Notifications takeover Ordinance 2002
283(I)/2021	April 02, 2021	Delegation AMLA Sanction Rules
292(I)/2021	April 02, 2021	Delegation of GFPR
295(I)/2021	April 02, 2021	Delegation of Powers

310(I)/2021	April 02, 2021	Draft Amendments to the Companies (Further issue of Shares) Regulations, 2020
379(I)/2021	April 02, 2021	Delegation of Powers to Commissioners & officers of SMD
380(I)/2021	April 02, 2021	Delegation of Powers to Supervision Division
447(I)/2021	April 05, 2021	Formation of Committee to Receive the Audit Regime
448(I)/2021	April 16, 2021	Amendment in Seventh Schedule
449(I)/2021	April 16, 2021	Draft Amendments to Companies (General Provisions & Forms) Regulations, 2018
494(I)/2021	April 20, 2021	Draft Amendments to Centralized Customer Protection Compensation Fund Regulations, 2017 dated April 19, 2021
496(I)/2021	April 20, 2021	Delegation of Powers AML Registrar Modaraba
492(I)/2021	April 20, 2021	Notification under section 66 of the Companies Act, 2017
508(I)/2021	April 28, 2021	Delegation of Powers to MDPRD-Insurance Division
507(I)/2021	April 28, 2021	Grant of Registration to Postal Life Insurance Company Limited.
527(I)/2021	April 29, 2021	Delegation of Powers of Registrar Modaraba
581(I)/2021	May 25, 2021	Amendments to NBFC & Notified Entities Regulations, 2008
553(I)/2021	May 26, 2021	Amendments to Futures Brokers (Licensing & Operations) Regulations , 2018 dated April 29, 2021
555(I)/2021	May 26, 2021	Amendments to Public offering (Regulated Securities Activities Licensing) Regulations, 2017 dated April 29, 2021
556(I)/2021	May 26, 2021	Amendments to Securities Brokers (Licensing & Operations) Regulations, 2016 dated April 29, 2021
603 (I)/2021	May 28, 2021	Delegation of Powers to Commissioners (CCD)
604(I)/2021	May 28, 2021	Draft Amendments in Companies (General Provisions & Forms) Regulations, 2018
638(I)/2021	June 04, 2021	Amendments in Listed Companies (Substantial Acquisition of Voting Shares & Takeovers) Regulations, 2017
37(I)/2020	June 16, 2021	Draft Amendments in Regulations of Associations with Charitable & Not for Profit Objects Regulations, 2018
800(I)/2021	June 24, 2021	Extention in Application of IFRS 9 on NBFCs & Modaraba for One Year till June 30, 2022
808(I)/2021	June 29, 2021	Amendments in Seventh Schedule to the Companies Act, 2017

SYNOPSIS OF IMPORTANT CASE LAWS DIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
<p>2021 PTD 460</p> <p>Sindh High Court</p> <p>Decided on December 22, 2020</p>	<p>Section 37A of the 2001 Ordinance</p>	<p>Amendment in Division VII of Part of the first Schedule vide Finance Act 2016 whereby provisos after Table in above Division VII were deleted. The petitions were filed before the SHC on the matter as follows:</p> <ol style="list-style-type: none"> 1) Whether the petitioner is entitled to this benefit for retrospective effect i.e. for tax years prior to amendment; 2) Legality of show cause notice issued by the respondent to petitioner regarding payment of tax on capital gains in case of debt securities / mutual funds despite provisos stands deleted by Finance Act 2016. <p>On the first petition it was held that retrospective impact of amendment as a rule was to be avoided unless express language if enactment warranted such interpretation. Hence no retrospective benefit was available to the same.</p> <p>On the second petition it was held that any doubts arising from interpretation of fiscal provisions must be resolved in favour of taxpayer. As the substitution carried by FA 2016 replaced entire constituent including provisos relied on by the department on such provisos in SCN was unjust and such notices were set-aside.</p>
<p>2021 PTD 578</p> <p>Supreme Court of Pakistan</p>	<p>Section 121, 122C and 127 of the 2001 Ordinance</p>	<p>Finance Act 2010 deleted sub-section (a) of section 121 [which empowered the Commissioner [based on any available information and to the best of his judgement] to make an assessment of taxable income of the person and the tax due thereon in case a person fails to furnish a return of income as required under section 114(3) / (4), and in instead a new section 122C was inserted. However, no changes were made to section 127(1) which provides right to appeal against order under section 121(a). The amendment resulted in taking away the right to appeal against the best provisional assessment order.</p> <p>Finance Act 2011 amended section 127(1) to take away the right to appeal against provisional assessment order under section 122C which was amended further to replace 'provisional assessment order' with 'assessment order'.</p> <p>Finance Act 2017 restored the position of section 121 and 127 as stood prior to Finance Act 2010.</p> <p>The question related to right of appeal under section 127 as a result of amendment vide Finance Act 2010, 2011 and 2012 till Finance Act 2017 was brought before ATIR by the taxpayers which was answered in favor of them. However, on tax reference filed by the department before HC the decision was reversed and agreed with the department. The petitions were filed before SCP for whether questions had been correctly answered by the above forums.</p>

		The SCP held that the right of appeal under section 127(1) had the form that it took as a result of Finance Act 2011, and taxpayers falling in the time period between FA 2012 and FA 2017 also had a right of appeal to CIR-A under section 127. Appeals were dismissed accordingly.
<p>2021 PTD 658</p> <p>Sindh High Court Sindh Club Karachi. Vs. Commissioner Inland Revenue</p> <p>Decided on March 02, 2016</p>	S. 10 – Income Tax Act 1922	<p>The reference was filed by the taxpayer against the order of the Commissioner Inland Revenue [as upheld by the Tribunal] taxing receipts of the club from its members.</p> <p>The action was agitated by the taxpayer.</p> <p>Giving recipe to the ‘Doctrine of Mutuality’ the petition was allowed by the court holding that one cannot charge tax himself. It is pertinent that vide Finance Act 2021</p>
<p>2021 PTD 795</p> <p>Peshawar High Court Gul Ayaz Plastic Industry vs. Tribal Area Electric Supply Company</p> <p>Decided on September 01, 2020</p>	Section 235/159 of the 2001, Ordinance.	<p>The tax authorities required collection of advance on electricity bills from taxpayers whose units were located in FATA. The tax authorities claim that such tax is to be collected unless taxpayer obtain exemption under section 159.</p> <p>The petitioner plead that in view of 25th Constitutional Amendment in article 247 of the constitution and clause 146 of Part I and clause 110 of Part IV Second Schedule, withholding tax and collection of taxes are not applicable on units established in FATA. Hence exemption certificate under section 159 should not be required.</p> <p>The petition was allowed by the Hon’ble Court.</p>
<p>2021 PTD 639</p> <p>Supreme Court of Pakistan Commissioner Inland Revenue vs. Sh. Muhammad Amin Rashid</p> <p>Decided on January 07, 2021</p>	Section 111/ 122(9)/122(5) of the 2001, Ordinance	<p>The taxpayer being a Commission Agent/ Broker declared income from supplies to companies. The Deputy Commissioner probed bank accounts of the taxpayers and identified alleged undeclared receipts and made addition under section 111 for suppressed sales/ receipts.</p> <p>The Hon’ble Court found the explanations of the taxpayer as implausible and unsubstantiated and hence endorsed the action of the tax authorities.</p>
<p>2021 PTD 634</p> <p>Appellate Tribunal Inland Revenue</p> <p>Decided on September 03, 2021</p>	122(2) of the 2001, Ordinance	<p>The taxpayer filed his return for tax year 2006 dated 30 September 2021. The return filed was amended under section 122(5) by the Additional Commissioner vide order dated 30 June 2021.</p> <p>The order was challenged in appeal by the taxpayer. Amongst merit, he contended that as per section 122(2) of the Ordinance as it stood prior to amendment vide Finance Act 2009, the return was time barred for amendment dated 30 September 2021 pleading that amendments vide Finance Act 2009 were substantive in nature and cannot be applied retrospectively.</p> <p>The appeal was allowed by the Tribunal.</p>
<p>2021 PTD 689</p> <p>The Lahore High Court</p>	Section 209(8A)	<p>The taxpayer challenged the transfer of his jurisdiction from Regional Tax Office to Large Taxpayers Office.</p> <p>The petition was dismissed by the High Court holding that FBR hold valid powers to transfer the cases.</p>

<p>Crescent textile Mills Limited vs. Federation of Pakistan</p> <p>Decided on December 21, 2020</p>		
<p>2021 PTD 913</p> <p>Sindh High Court</p> <p>M/s State Life Insurance Corporation of Pakistan vs Commissioner Income Tax, COS III, Karachi and others</p> <p>Decided on November 24, 2020</p>	<p>Section 26, 156 and 80D of the 1979 Ordinance</p>	<p>The taxpayer a State owned insurance company filed reference before SHC on the matter relating to applicability of minimum tax at 0.5% of turnover under section 80D of the repealed Income Tax Ordinance, 1979 [1979 Ordinance].</p> <p>The question put before the SHC was that whether the department was justified in applying the provision of section 80D and issuing rectified order under section 156.</p> <p>The AR of the taxpayer plead that the tax payable by the company, is not computed under normal method of taxation but is specifically dealt with under Section 26 read with Fourth Schedule to the 1979 Ordinance applicable to insurance companies, hence the provision section 80D is applicable to normal business but not to the insurance corporation.</p> <p>According to the department the invoking of section 156 was neither through long drawn process nor was a result of lengthy discussion but from the record available with the department furnished by the corporation. Further that section 80D was a provision enacted latter in time, and hence prevail would prevail over section 26 of the said ordinance. The taxpayer being a statutory entity fell within the definition of 'Person' and was not absolve from applicability of section 80D.</p> <p>The matter was decided in favor of the department on the basis that and accordingly the taxpayer was liable to pay minimum tax on its turnover in term of section 80D of the repealed ordinance also validating the action by rectification.</p>
<p>2021 PTD 885</p> <p>Sindh High Court Commissioner Inland Revenue vs. Messrs MSC Switzerland Geneva and others.</p> <p>Decided on April 12, 2021</p>	<p>Section 4B and 107 of the 2001 Ordinance</p>	<p>The department filed reference with SHC to challenge the decision of ATIR regarding non-applicability of super tax under section 4B of the 2001 Ordinance in case of taxpayers who fall within the ambit of double tax treaties between Pakistan and foreign countries</p> <p>It was held that by SHC that in view of binding pronouncements holding super tax to be a tax on income coupled with SHCE's finding that the present levy is identical / substantially similar to the levies existing at the time that the Treaty was entered into super tax as levied was prima facia identical to the levies existing at the time the treaty was entered into, the taxpayers who are otherwise qualified and fall within double taxation treaties between Pakistan and respective foreign countries are either exempt or, wherever applicable, liable to super tax at reduced rate(s) in terms of their respective treaties.</p>
<p>2021 PTD 971</p> <p>Sindh High Court Sapphire Textile Mills Limited vs. Federation of Pakistan</p>	<p>Section 5A of the Ordinance</p>	<p>The petitioner assailed the vires of section 5A of the 2001 Ordinance inserted vide Finance Act 2015 and further amended vide Finance Act 2017 and sought for the same to be declared unconstitutional before SHC on the basis that the regulation of companies undertaken vide Companies Act 2017 being special in nature and any such attempt at such regulation by inserting penal provisions into the Ordinance, routed through a money bill was</p>

<p>Decided on April 30, 2021</p>		<p>prima facie unmerited. Further, plain reading of section 5A suggests that it amounts to double taxation as income received and taxed in the same hand ceases to be income.</p> <p>It was held that the insertion of section 5A including amendment made from time to time is ultra vires of Article 73 of the Constitution of Pakistan and struck down by SHC on the basis that regulation of companies' behavior cannot be effected vide a money bill within the mandate of Article 73 of the Constitution.</p>
<p>2021 PTD 1088</p> <p>Islamabad High Court Attock Gen Limited Vs. Chief Commissioner Inland Revenue, RTO, Rawalpindi</p> <p>Decided on August 06, 2020</p>	<p>Section 25, 120 and 177 of the 2001 Ordinance</p>	<p>The taxpayer company filed reference before IHC to challenge the order passed by ATIR on the matter</p> <p>a) Disallowance of set-off of administrative and management expenses as pre-commencement expenditures under section 25 incurred by the petitioner company in setting up a power generation plant [i.e. before commencement of business] from the interest income under the head "income from other sources" under section 39 of the 2001 Ordinance; and</p> <p>b) Selection for audit under section 177 by the Commissioner Audit for Tax Year 2008 on the basis that selection for audit was in violation of settled law as the criteria for selection by Board was not followed.</p> <p>The IHC upheld the order of ATIR on the both petitions.</p>
<p>2021 PTD 933</p> <p>Sindh High Court</p> <p>Human Resource Solutions (Pvt.) Ltd vs. Federation of Pakistan</p> <p>Decided on April 27, 2021</p>	<p>Section 153(1)(b) of the 2001 Ordinance</p>	<p>The petitioners that are outsourced manpower providing companies filed petition before SHC regarding applicability of withholding tax under section 153(1)(b) of the 2001 Ordinance to be deducted on service fee amount only and not on the gross amount received including reimbursement of salaries / wages.</p> <p>It was held that gross amount referred to in section 153(1)(b) of the 2001 Ordinance on which advance tax has to be deducted is the gross fee received in lieu of services excluding the amount of reimbursable expenses.</p>
<p>2021 PTD 1016</p> <p>Lahore High Court</p> <p>Messrs Syed Jamil & Company (Pvt) Ltd vs. Pakistan Railways</p> <p>Decided on May 05, 2021</p>	<p>Section 236A, 127 and 170 of the 2001 Ordinance</p>	<p>In case, the taxpayer filed writ petition to restrain department from encashing the bank guarantee deposited by the taxpayer in lieu of the advance tax under section 236A of the Income Tax Ordinance, 2001. Contention of taxpayer was that he had already filed an appeal under section 127 of the said Ordinance along with application to restrain such encashment, which was pending and till the matter was settled before no such encashment/recovery could be made.</p> <p>The court directed the department to decide the appeal within one month, and till the decision of appeal, no coercive measure of recovery of tax liability could be made.</p> <p>The petition was disposed of accordingly.</p>

SYNOPSIS OF IMPORTANT CASE LAWS INDIRECT TAXES

CITATION	SECTION(S)	ISSUED INVOLVED
<p>2021 PTD 558 (Sindh High Court)</p> <p>Karachi Golf Club Vs Province of Sindh</p> <p>Decided on March 10, 2021</p>	<p>Section 3 of the Sindh Sales Tax of Services Act 2011</p>	<p>The crux of the matter is whether members fee and subscription charges received by members club from their members fall under the ambit of Sindh Sales Tax on Services Act 2011 read in conjunction with Doctrine of Mutuality.</p> <p>Doctrine of mutuality rest upon satisfaction of three conditions.</p> <ol style="list-style-type: none"> 1. Absence of Commerciality 2. Presence of complete identity between the contributor and the participant 3. Impossibility for the contributor to derive profit from oneself <p>Vide this judgement, it is held that services provided by members club to its member are excluded from the ambit of economic activity as the functionality of the members club is to organize a social activity confined to its members which falls under the exclusion of economic activity as it exempts private recreational pursuit and consequently taxable services based upon the doctrine of mutuality.</p> <p>Further, Circular No 1 of 2012 dated 14.02.2012 issued by SRB is dissonant with the law to the extent of members club are concerned.</p> <p>Moreover, Rule 42(2)(a) of the Rules cannot impose tax liability upon members club as no rules can be interpreted to exceed the mandate of parent statute.</p>
<p>2021 PTD 587 (Lahore High Court)</p> <p>Pattoki sugar mills limited Vs Federation of Pakistan</p> <p>Heard on January 12, 2021</p>	<p>Section 2(46) of Sales Tax Act 1990 read with SRO No 812 of 2016 dated 02.09.2016</p>	<p>Constitutional Petition was filed challenging SRO 812 of 2016 dated 02.09.2016 whereby value of white crystalline sugar was fixed at the rate of Rs 60 per KG.</p> <p>Vide this Judgement, Lahore High Court has held that the first proviso is an exception to main section of section 2(46) of the Act and not merely an exception to clause (g) of the said section. This argument is supported by the fact that through Finance Act 2019 and 2020 clause (h) and (i) were added after clause (g) but before the first proviso which means that proviso is an exception to even clause (h) and (i) and not merely clause (g).</p> <p>Moreover, because the first proviso is an exception to Section 2(46) of the Act, it was held that even if market price is less than the price fixed by the board, the price fix by the board shall prevail and interpretation to the contrary would render the proviso redundant.</p> <p>Resultantly, SRO 812 of 216 is not ultra vires to the Constitution.</p>
<p>2021 PTD 542 (Sindh High Court)</p> <p>Al Razzaq Fibers (Pvt) Ltd Vs Federation of Pakistan</p>	<p>Section 3(2)(b) of Sales Tax Act 1990 read with SRO 584 of 2017 dated 01.07.2017</p>	<p>In this case, the amendment in SRO 1125(I)/2011 made through SRO 584(I)/2017 whereby amongst other changes, further tax on supplies made to unregistered persons was imposed in respect of supplies covered under SRO 1125 including zero rated supplies. The said amendment was challenged as being unconstitutional on the ground that such amending notification issued by the approval of the 'Federal Minister-in-Charge' under Section 3(2)(b) of the ST</p>

<p>Decided on January 18, 2021</p>		<p>Act, the power of which previously was held by 'Federal Government' prior to amendment made through Finance Act, 2017.</p> <p>The SHC, while placing reliance on Supreme Court's judgement in case of Mustafa Impex (PTCL 2017 CL. 456) and Sindh High Court's judgement in CP D-7159 whereby section 18(3) of the Customs Act was struck down as unconstitutional and Lahore High Court Judgement in the case of Plastic Industries (2019 PTD 1542) wherein Section 4(c) was struck down, held the amendment in Section 3(2)(b) through Finance Act, 2017, ultra vires of Constitution and of no legal effect.</p> <p>Resultantly, the amendment made through SRO 584 issued in purported exercise of powers conferred by Section 3(2)(b) was also declared by the Court as ultra vires and of no legal effect and therefore was struck down.</p>
<p>2021 PTD 731 (Sindh High Court) Sami Pharmaceuticals (Pvt) Ltd Vs Province of Sindh Decided on November 17, 2020</p>	<p>Section 4(3)(a) of the Sindh Sales Tax on Services Act, 2011 read with Rule 42(e) of Sindh Sales Tax on Services Rules, 2011</p>	<p>Constitutional Petition was filed challenging Notification No SRB 3-4/12/2017 dated 05.06.2017 pursuant to which proviso to Rule 42(E) of the Sindh Sales Tax Rules 2011 has been deleted as a consequence of which manpower services are taxable on gross basis including the amounts reimbursed to service provider in lieu of salaries and wages.</p> <p>Vide this judgement, it was held that tax can only be levied through a charging section i.e. Section 3. Moreover, Section 4(3)(a) specifically excludes activities of employee providing services in that capacity to an employer. Hence, what an act excludes cannot be included by way of Rules as to create a charging provision.</p> <p>Hence, even if the proviso is omitted, it is only the value of service which is taxable and not the amount being reimbursed.</p>
<p>2021 PTD 703 (Punjab Revenue Appellate Tribunal) Telenor LDI Communication (Pvt) Ltd Vs Commissioner (Appeals) PRA Lahore Decided on January 07, 2020</p>	<p>Section 3 & 24 of Punjab Sales Tax on Services Act, 2012 read with Rule 106 of PSTS (Definition) Rules, 2012 and PSTS (Specific Provision) Rules, 2012</p>	<p>The crux of the argument is whether International incoming calls are taxable under the head of Telecommunication Services.</p> <p>The tribunal held based on the agreements of the appellant that International incoming calls are taxable under the head of Telecommunication services.</p> <p>Moreover, since the services have been used in Pakistan too, the said services cannot be classified as export of services and be exempt from tax.</p>
<p>2021 PTD 713 (Sindh High Court) Sindh Petroleum and CND Dealers Association Vs Federation of Pakistan Decided on February 11, 2021</p>	<p>Section 34 of the Sales Tax Act, 1990</p>	<p>The crux of the matter is whether a company can be delegated the right and responsibility to adjudicate and recover default surcharge from its subscribers.</p> <p>Brief facts of the case are SSGC issued notices to the petitioners requiring them to pay un-adjudicated default surcharge. After which special bills were also sent seeking recovery of the amounts.</p> <p>Vide this judgement, it was held that the process of adjudication is quasi-judicial in nature and the Supreme Court of Pakistan has held that there could be no delegation of power in this regard.</p> <p>Moreover, it is a trite law that before initiating recovery proceeding, adjudication is must. A recovery notice without adjudication is</p>

		illegal. In the present case since the bills were issued without and adjudication process the same are held to be illegal and void ab-initio.
<p>2021 PTD 945 (Lahore High Court [Multan Bench]) Commissioner Inland Revenue Vs Messrs Malik Enterprises Decided on January 30, 2017</p>	<p>Section 8B and 66 of the Sales Tax Act, 1990</p>	<p>Brief facts of the case are that respondent has adjusted 100% input tax in violation of provisions of Section 8B of the Act read with SRO 647/2007 dated 27.06.2007 which bars the taxpayer for adjustment of input tax in excess of 90% from his output tax.</p> <p>Vide this judgement, it was held that since no mala fide intention was proven against the respondent it would be pointless to ask the person to run through the entire process again which could not be the intention of the legislature. At worst department could have proceeded to impose penalty against non-compliance of a procedural formality. Hence, the reference filed by the department was dismissed.</p>
<p>2021 PTD 1082 (Sindh High Court) Reliance Petrochemical Industries (Pvt) Ltd Vs Federal Board of Revenue Decided on March 01, 2021</p>	<p>Section 40B of the Sales Tax Act, 1990</p>	<p>The crux of the matter is whether the order passed by the Commissioner under the proviso of Section 40B of the Act which allowed the commissioner to post the officer at the premises of the registered person for surveillance of business activity would survive after its omission through Finance Act 2018.</p> <p>Vide this judgement it was held that the omission of the proviso manifests the intention of the legislature to take away the power of the commissioner to deploy officer at taxpayer premises. Given that intent, it would be absurd to suggest that notwithstanding the omission legislature intended the officer to continue the monitoring process tasked by the commissioner. Hence, order passed by the commissioner does not survive after the omission of proviso.</p>
<p>2021 123 TAX 367 (Supreme Court of Pakistan) Federal Board of Revenue Vs Abdul Ghani and another Decided on October 04, 2019</p>	<p>Section 11, 45-B, 46 & 74 of the Sales Tax Act 1990</p>	<p>The crux of the matter is whether the period of time limitation provided under the Act can be overridden in the matter of tax fraud.</p> <p>Vide this judgement, the Supreme court confirming the order of the Lahore High Court held that order passed by FBR under section 74 of the Act fails to state the reason for extending the period of limitation. Moreover, Section 74 neither specifically envisages nor provides guidance, criteria, parameters for overriding any limitation period prescribe under the Act.</p> <p>Hence, the period of time limitation equally applies on proceeding related to tax fraud.</p>
<p>2021 123 Tax 219 (Appellate Tribunal Inland Revenue) RAD Enterprises Vs CIR Zone IV, RTO II, Karachi Decided on March 11, 2019</p>	<p>Section 2(37), 11, 21 & 73 of Sales Tax Act 1990 read with Rules 12 of Sales Tax Rules 2006</p>	<p>The facts of the case are suspension order was issued to the appellant without any prior notice. Afterwards, showcause notice for blacklisting was issued to the Appellant that sales made to Al-Hammad Enterprises was made without charging sales tax and sales to other blacklisted unit were also made. The appellant submitted the reply that sales tax was charged and deposited on sales made to Al-Hammad Enterprises and sales made to other parties were made when they were active, which was not accepted by the department and the department passed the order of Blacklisting sales tax registration from the date of sales tax registration.</p> <p>Vide this Judgement, the tribunal held that since no prior notices to suspension was given, the order of suspension and blacklisting are not maintainable under the law. Moreover, even on facts of the case</p>

		<p>the order is not maintainable as none of the conditions prescribe in Rule 12 are applicable.</p> <p>Moreover, it was held that no evidence to establish criminal charge of issuance of fake invoices was brought by the department. It is also well settled law that an adjudication based on mere presumption of fact is not sustainable and in tax fraud cases initial burden lies on department which has not been discharged in this case.</p>
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Note: Members are advised to read complete Case laws, Circulars and SROs/ Notifications for better understanding of respective issues.