

E-News & Views

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A Publication of KTBA October 2022 to December 2022

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,

This is the last issue of E-News and Views published today as your current Executive Committee will complete its tenure tomorrow i.e. on the 16th March, 2023 and Insha Allah the new elected Executive Committee will serve the Bar with great zeal and honor in order to facilitate you in the best possible manner.

This fourth issue is once again contain all the relevant current Notifications, Circulars and Legal Judgments which will help you as a ready reference to be quoted in your legal writings and communication to be done for your clients and related matters.

Hameer has done his job very efficient time and again therefore deserve a big round of applause. persons like Hameer are rare, his devotion, his dedication and sincerity towards the assignment and tasks given to him is commendable and remarkable.

Once again, I would like to congratulate this gentleman and his whole team for completing the whole tenure amicably, efficiently and professionally.

Last but not least a very Good bye to all of you with a pray Almighty Allah that may you all succeed in your future endeavors and may Almighty Allah give you all the courage to fight against all odds, I wish you all the happiness and a lovely healthy life ahead.

Syed Rehan Hasan Jafri

FROM THE DESK OF THE CONVENER

Dear Fellow Members,

It is my great pleasure to present the fourth and final publication of E-News & Views of this Committee.

We have compiled in this issue, Circulars, SROs and Notifications concerning revenue laws of the Country issued from October, 2022 till December, 2022.

This publication also covers circulars and notifications issued by the Sindh Revenue Board and the Securities & Exchange Commission of Pakistan.

In addition to the aforesaid, synopsis of important case laws dealing with Income Tax, Sales Tax, Federal Excise Duty and Customs are also part of this publication.

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.

I am extremely grateful to the team of E-News & Views for completing the task. I am confident that this E-News & Views Committee will continue to be an informative publication for the respected members of our bar.

Yours in service,

Hameer Arshad Siraj

DIRECT TAX CIRCULARS AND SROs

Direct Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
17 of 2022	October 31, 2022	Further Extension In Date Of Filing Of Income Tax Returns For Tax Year 2022
18 of 2022	November 30, 2022	Further Extension in Date of Filing of Income Tax Returns for Tax Year 2022

Direct Tax SROs

SRO REFERENCE	DATE	SUBJECT
1829(I)/2022	October 03, 2022	Amendment in S.R.O No. 978(I)/2022 dated 30.06.2022
1891(I)/2022	October 13, 2022	Amendment in Part-II-V of the Second Schedule to the Income Tax Rules, 2002
1892(I)/2022	October 13, 2022	Amendments in rules 37(2), 38(2) and Second Schedule to the Income Tax Rules, 2002
1955(I)/2022	October 24, 2022	Amendments in rules 37(2), 38(2) and Second Schedule to the Income Tax Rules, 2002
1956(I)/2022	October 24, 2022	Amendment in Income Tax Rules 2002 Rule 13P(q), Rule 13L(d), Rule 13P(L), Rule 13N(5A)
2052(I)/2022	November 22, 2022	Amendment in Rule 34 of Income Tax Rules, 2002
2068(I)/2022	December 01, 2022	Amendment in Rule 34 of Income Tax Rules, 2002
2200(I)/2022	December 12, 2022	Exemption from Capital Value Tax under Sub-Section (12) of Section 8 to the Finance Act, 2022
2300(I)/2022	December 27, 2022	Updation of Valuation of Immovable Properties (Lahore)

Indirect Tax CIRCULARS AND SROs

Indirect Tax SROs

SRO REFERENCE	Dated	SUBJECT
1963(I)/2022	October 25, 2022	The Federal Government is pleased to exempt whole of Sales Tax payable on goods supplied to JICA
2042(I)/2022	November 15, 2022	Amendment in Sales Tax Rules, 2006
2061(I)/2022	November 25, 2022	Establishment of Check Post for Enforcement of Provision of Section 40D of the Sales Tax Act, 1990

Indirect Tax Notifications- SRB

NOTIFICATION REFERENCE	Dated	SUBJECT
SRB-3-4/37/2022	October 04, 2022	Amendment in notification No. SRB-3-4/28/2022 dated 5th August, 2022-----Jurisdiction of the Deputy Commissioners, SRB
SRB-3-4/38/2022	October 04, 2022	Amendment in notification No. SRB-3-4/28/2022 dated 5th August, 2022-----Jurisdiction of the Deputy Commissioners, SRB
No.SRB/ADMIN/2022/30301	October 19, 2022	Notification
SRB-3-4/39/2022	November 04, 2022	Amendments in time bound notification No. SRB-3-4/36/2022 dated 13.09.2022 regarding exemption on SST on services relating to flood relief operations in Sindh
SRB-3-4/40/2022	November 04, 2022	Amendment in notification No. SRB-3-4/28/2022 dated 5th August, 2022-----Jurisdiction of the Assistant Commissioners, SRB
SRB-3-4/43/2022	November 14, 2022	Notification of appointing Mr. Syed Mohsin Ali Shah, Deputy Commissioner SRB
SRB-3-4/41/2022	November 15, 2022	Amendment in notification No. SRB-3-4/33/2022 dated 15th August, 2022-----Jurisdiction of the Commissioners, SRB
SRB-3-4/42/2022	November 15, 2022	Amendment in notification No. SRB-3-4/29/2022 dated 5th August, 2022-----jurisdictions and functions of the Commissionerates in SRB and units of the services sectors under the SRB Commissionerates
SRB-3-4/44/2022	November 15, 2022	Amendment in notification No. SRB-3-4/29/2022 dated 05th August, 2022-----Jurisdiction of the Commissioners, SRB
SRB-3-4/45/2022	November 26, 2022	Amendment in notification No. SRB-3-4/28/2022 dated 5th August, 2022-----Jurisdiction of the Assistant Commissioners, SRB
SRB-3-4/46/2022	December 09, 2022	Notification
SRB-3-4/48/2022	December 19, 2022	Amendment in notification No. SRB-3-4/28/2022 dated 5th August, 2022-----Jurisdiction of the Assistant Commissioners, SRB

Indirect Tax Circulars - SRB

CIRCULAR REFERENCE	Dated	SUBJECT
No.SRB/TP/1/2023/47667	December05, 2022	Sindh Budget 2023-2024 ----- Invitation of proposals in relation to the Sindh Sales Tax on Services Act, 2011 (Sindh Act No. XII of 2011), and the rules and notifications issued thereunder.

Circulars Issued by SECP

Notification Order No.	Dated	SUBJECT
09 of 2022	October12, 2022	Regulatory framework for account opening by AMCs
10 of 2022	October13, 2022	Sales load being charged by CIS
11 of 2022	October24, 2022	Categorization of open-end money market collective investment schemes (CISs)
15 of 2022	December28, 2022	Requirements for NBFCs engaged in digital lending

Notifications issued by SECP

Notification Order No.	Dated	SUBJECT
S.R.O. 958(I)/2022	October18, 2022	Amendment to the Securities Exchanges (Licensing and Operations) Regulations, 2016
S.R.O. 1912(I)/2022	October18, 2022	Amendments in the Futures Brokers (Licensing and Operations) Regulations, 2018
S.R.O. 1914(I)/2022	October18, 2022	Amendments in the Securities Brokers (Licensing and Operations) Regulations, 2016
S.R.O. 1896(I)/2022	October24, 2022	Amendments to the Securities Brokers (Licensing and Operations) Regulations, 2016
	November11, 2022	Seventh Schedule Updated till 05.08.2022
S.R.O. 2066(I)/2022	November 30, 2022	Draft Unlisted Companies (Buy-Back of Shares) Regulations,2022
S.R.O. 2108(I)/2022	December01, 2022	Amendments to Collateral Management Companies Regulations, 2019
S.R.O. 2130(I)/2022	December 02, 2022	Draft Amendments to Futures Exchanges (Licensing and Operations) Regulations, 2017
S.R.O. 2131(I)/2022	December 02, 2022	Draft Amendments to Clearing Houses (Licensing and Operations) Regulations, 2016
S.R.O. 2133(I)/2022	December 02, 2022	Draft Amendment to the Central Depository (Licensing and Operations) Regulations, 2016
S.R.O. 2134(I)/2022	December 02, 2022	Draft Amendments to the Securities Exchanges (Licensing and Operations) Regulations, 2016
S.R.O. 2132(I)/2022	December 05, 2022	Draft Amendments to Securities Brokers (Licensing and Operations) Regulations, 2016
S.R.O. 2192 (I)/2022	December 06, 2022	Amendment in the Companies (Postal Ballot) Regulations, 2018

SYNOPSIS OF IMPORTANT CASE LAWS DIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
<p>2022 PTD 1679</p> <p>Sindh High Court</p> <p>Messrs. Sindh Irrigation and Drainage Authority (SIDA) Vs. The Commissioner of Income Tax Hyderabad Zone, Hyderabad and another</p> <p>I.T.R.As. Nos. 967 and 968 of 2008</p> <p>Decided on January 03, 2020</p>	<p>Section 84 of Income Tax Ordinance, 2001</p>	<p>The brief facts of the case are that the applicant, M/s. Sindh Irrigation and Drainage Authority (SIDA), entered into an agreement with a joint venture Association of Persons (AOP) comprising of M/s. ARCADIS BMB and Sidat Hyder Morshed Associates (Pvt.) Ltd. for providing Management Consultants Services. The applicant had made payments of service charges to the said AOP. The concerned taxation officer issued a notice to the applicant and then passed the assessment order, in which 15% withholding tax was levied on the applicant for the services rendered. The learned counsel for the applicant contended that the applicant had signed an agreement with a resident AOP, therefore the tax deduction should be 5% instead of 15%. The learned counsel of the department submitted that M/s. ARCADIS BMB Management Consulting filed its income tax return as a non-resident company.</p> <p>The Honorable High Court, after examining Section 84 of the Income Tax Ordinance, 2001, held that it made no difference that one of the members of the association had filed an income tax return as a non-resident person. Furthermore, the Honorable High Court held that the legal position of the Association of Persons would not change and that the Appellate Tribunal had erred in treating the Association of Persons as a non-resident. The Honorable High Court held that the tax required to be deducted was at the rate of 5% instead of 15%.</p>
<p>2022 PTD 1752</p> <p>Sindh High Court</p> <p>The Commissioner of Income Tax, Companies Zone-IV, Karachi Vs. Muhammad Hamid</p> <p>I.T.R. No. 220 of 2005 and Reference Case No. 141/KB of 2002</p> <p>Decided on August 20, 2020</p>	<p>Section 62, 65 and 136 (1) of the Repealed Income Tax Ordinance, 1979.</p>	<p>The brief facts of the case are that the Respondent/taxpayer is an individual and director of M/s. Paradise Services (Pvt.) and one of the co-owners of the Paradise Hotel. The return of total income was filed for the assessment year 1991–1992, declaring an income of Rs. 99,900/-. The department/applicant reopened the respondent's case under Section 65 of the Repealed Ordinance, 1979, contending that the department had "definite information" of non-disclosure of the investment made by the taxpayer in Paradise Hotel. The concerned Assessing Officer (AO) completed the assessment by making an addition of Rs. 13,33,333/- to the income of the respondent. An appeal was filed before the Commissioner of Income Tax Appeal (CITA) by the taxpayer, who cancelled the assessment order. The department aggrieved by the CITA order appealed before the Income Tax Appellate Tribunal (ITAT), which was pleased to uphold the order of the CITA. The department then filed a reference application requiring the ITAT to refer the above question of law to the Honorable High Court.</p> <p>The Honorable High Court answered the above question of law in favor of the respondent after examining Section 65 of the Repealed Ordinance, 1979, which states that there has to be "definite information" available with the department to reopen a completed assessment. The Honorable High Court held that in this case, the department did not have such definite information. Consequently, the Honorable High Court held that</p>

		the department was unjustified in reopening the previous assessment of the respondent.
2022 PTD 1627 Lahore High Court (Multan Bench) Ashiq Ali Chaudhary vs. Federal Board of Revenue and others Writ Petition No. 5466 of 2021 Decided on April 07, 2021	Section 127 of Income Tax Ordinance, 2001	<p>The issue before the Honorable High Court was that the Petitioner was required to file an appeal electronically under Section 127 of the Income Tax Ordinance, 2001, against the impugned order passed by the Commissioner of Inland Revenue without any bar code mechanism, due to which the petitioner was unable to file an appeal electronically. The petitioner sought indulgence from the Honorable High Court to direct the Commissioner (Appeals) to allow him to file the appeal manually, along with an application for condonation of delay, as the statutory period of thirty days to file an appeal under section 127 of the Income Tax Ordinance, 2001, had already elapsed.</p> <p>The Honorable High Court held that if the stance of the Petitioner that the impugned order has been issued without any bar code mechanism is found correct, then the petitioner will be at liberty to file an appeal manually under Section 127 of the Income Tax Ordinance, 2001, along with an application for condonation for the delay in time.</p>
2022 PTD 1806 Sindh High Court Commissioner Inland Revenue Vs. Mahvash and Jahangir Siddiqui Foundation I.T.R.A. No. 32 of 2020 Decided on August 25, 2021	Section 122, 122(5), 177 and 177(6A) of the Income Tax Ordinance, 2001	<p>The brief facts of the case are that the Respondent/taxpayer was selected for audit for Tax Year 2011 on 25.02.2013. The applicant/Commissioner of Inland Revenue after examining the records instead of issuing an audit report, passed an amendment assessment order under Section 122 without satisfying the requirements of section 177(6A) of the Income Tax Ordinance, 2001. Being aggrieved by the said order, the respondent subsequently filed an appeal before the learned Appellate Tribunal, which held that the Commissioner of Inland Revenue had failed to provide the appellant with a reasonable opportunity to be heard. Furthermore, the learned Appellate Tribunal observed that the entire scenario was made up in order to keep the case from becoming time-barred on June 30, 2017. Being aggrieved with the said impugned order, the Commissioner of Inland Revenue filed a reference application before this Honorable High Court. The question of law before the Honorable High Court was whether the amendment under Section 122 without fulfilling the requirements of Section 177 (6A) of the Income Tax Ordinance, 2001, was justified.</p> <p>The Honorable High Court ruled in favor of the respondent on the said question of law and dismissed the reference application. The Hon'ble Court held that it is a statutory requirement that the issuance of an audit report is mandatory and that the taxpayer must be given an opportunity to be heard. Furthermore, the Honorable High Court held that in the current circumstances of this case, no audit report was issued to the tax payer and no reasonable opportunity to be heard was provided. Consequently, the Honorable High Court held that the actions of the Commissioner of Inland Revenue have rightly been deprecated by the learned Appellate Tribunal.</p>
2022 PTD 1619 Sindh High Court Messrs. Telenor Micro Finance Bank Ltd. Vs.	Section 159 (1), of the Income Tax Ordinance, 2001 Clause 47B of Part IV of Second Schedule	<p>The brief facts of the case are that the applicant's counsel contended that the funds collected by the applicant fall within the category of entries enumerated under clause 47 B Part IV of the Second Schedule of the Income Tax Ordinance, 2001, which are exempt from advance tax deduction, and obtaining a valid exemption certificate under section 159 (1) of the Income Tax Ordinance, 2001, is not mandatory for claiming such an exemption.</p>

<p>Commissioner Inland Revenue</p> <p>I.T.R.A. Nos. 327, 328 of 2019 and 28 of 2020</p> <p>Decided on May 17, 2022</p>	<p>of the Income Tax Ordinance, 2001</p>	<p>The Honorable High Court held that the concession granted under clause 47B of Part IV of the Second Schedule of the Income Tax Ordinance, 2001, which is an exemption from advance tax deduction, can only be availed of by the withholder (applicant) when the withholdee issues a valid exemption certificate to the withholder (applicant) under section 159 (1) of the Income Tax Ordinance, 2001. Reliance was placed by the Honorable High Court on the case of Meezan Islamic Fund and others v. D.G. (WHT) FBR and others reported in (2016 PTD 1204).</p>
<p>2022 PTD 1727</p> <p>Supreme Court of Pakistan</p> <p>Messrs. Kohinoor Spinning Mills Ltd Vs. Commissioner Inland Revenue</p> <p>Civil Petition No 2006 of 2022</p> <p>Decided on August 23, 2022</p>	<p>Section 21(e) of Income Tax Ordinance, 2001</p>	<p>The issue before the Honorable Supreme Court of Pakistan was that the Petitioner was aggrieved against the findings of the learned Appellate Tribunal (subsequently approved by the Lahore High Court), which contended that the contributions made by the petitioner to an unapproved gratuity fund were not allowed to be deducted while computing the income tax of the petitioner under the head "Income from Business" under Section 21(e) of the Income Tax Ordinance, 2001. The contention of the counsel for the petitioner was that once the contribution is made to a gratuity fund, then section 21(e) is not applicable.</p> <p>The Honorable Supreme Court dismissed the petition after examining Section 21(e) of the Income Tax Ordinance, 2001, which states that the contributions made by the petitioner to an unapproved gratuity fund cannot be deducted while computing the income tax of a petitioner under the head "Income from Business". The Honorable Supreme Court held that under the circumstances of this case the gratuity fund has not been approved.</p>
<p>(2022) 126 Tax 444</p> <p>Lahore High Court</p> <p>Allied Bank Limited Vs. Appellate Tribunal Inland Revenue, Lahore & others</p> <p>ITR No. 63041 of 2022</p> <p>Decided on October 20, 2022</p>	<p>Section 122, 122(5A), 122(9), 210(1), 210(1A) & 211 of the Income Tax Ordinance, 2001</p>	<p>The issue before the Honorable High Court was whether the Commissioner of Inland Revenue can delegate his powers under Section 210 to amend or further amend the assessment order under Section 122(5A) of the Income Tax Ordinance, 2001, when the law envisages "consideration" by the Commissioner as stipulated under Section 122(5A). The other question of law before the Honorable High Court was the exercise of jurisdiction by the Additional Commissioner under Section 122(5A) of the Income Tax Ordinance, 2001.</p> <p>The Honorable High Court held that the Commissioner of Inland Revenue can delegate all or any of its powers and functions, other than the power of delegation, to any other taxation officer by notification or order of delegation. The Honorable High Court, after examining Section 210 (1A) of the Income Tax Ordinance, 2001, held that the Additional Commissioner can exercise the powers of amendment of assessment under sub-section (5A) of Section 122 delegated to him by the Commissioner Inland Revenue. Consequently, the Honorable High Court decided the reference application against the taxpayer/applicant.</p>

SYNOPSIS OF IMPORTANT CASE LAWS INDIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
(2022) 126 TAX 600 Peshawar High Court Lucky Cement Limited Vs. Federation of Pakistan Writ Petition No. 5857-P of 2018 Decided on January 26, 2022	Section 11 of the Sales Tax Act, 1990	<p>The brief facts of the case are that during the audit of the sales tax record of the Petitioner for financial years 2013 to 2018, the Deputy Commissioner of Inland Revenue observed the discrepancies of inadmissible input tax and, in this regard, issued two separate show-cause notices dated 24.10.2018 and 28.10.2018 for the tax periods of November 2013 to March 2018 and July 2013 to October 2013. Being aggrieved by such notices, the petitioner filed the instant constitutional petition, contending that the Deputy Commissioner of Inland Revenue has no lawful authority or jurisdiction to issue such notices.</p> <p>The Honorable High Court, after examining Section 11 of the Sales Tax Act, 1990, and with reference to the case of The Commissioner Inland Revenue, Zone-III, RTO-II, Lahore vs. Messrs. Hamza Nasir Wire and Others reported in [(2020) 122 Tax 274 (Supreme Court of Pakistan)], held that the show cause notices had been issued by the Deputy Commissioner of Inland Revenue in accordance with law. Therefore, the Honorable High Court dismissed the petition.</p>
2022 PTD 1776 Peshawar High Court Commissioner Inland Revenue, Regional Tax Office, Peshawar Vs. Messrs. Gadoon Textile Mills, Gadoon Amazai Swabi and another Sales Tax Reference No. 09-P of 2017 Decided on February 24, 2022	Section 8 (ca) and 73 of the Sales Tax Act, 1990	<p>The brief facts of the case are that the respondent is a buyer of goods and services that are supplied to him by the supplier. The supplier here has not deposited the sales tax amount in the government treasury with regard to goods or services, which is contrary to Section 8(ca) of the Sales Tax Act, 1990. The respondent/buyer had filed a sales tax return for the tax period of January 2014 and claimed refund of sales tax. After the cross-verification of input tax and the refund claimed by the respondent, the Commissioner of Inland Revenue issued a show-cause notice contending that certain discrepancies are involved in the sales tax record to the tune of Rs. 4,818,710/-. After examining the reply of the respondent to the said show-cause notice, the Commissioner of Inland Revenue passed an assessment order dated 23.12.2015 and an amount of Rs. 4,717,275/- was rejected on account of being inadmissible input tax. Being aggrieved by the said Order-in-Original, the respondent preferred an appeal before the Commissioner (Appeals), who partially accepted the contentions of the Commissioner of Inland Revenue vide Order-in-Appeal dated 19.05.2016.</p> <p>Being dissatisfied with the Order-in-Appeal, the respondent preferred an appeal before the learned Appellate Tribunal, which vacated the orders of the Commissioner of Inland Revenue and the Commissioner (Appeals). Being dissatisfied with the learned Appellate Tribunal's order, the appellant/Commissioner of Inland Revenue filed this reference application before the Honorable High Court, contending that the learned Appellate Tribunal's order directing the Department to recover the due sales tax from the supplier and then credit the same to the taxpayer is contrary to Section 8(ca). The main contention of the appellant was that the supplier had not deposited the sales tax amount in the government treasury, so the buyer was not entitled to the refund of the sales tax.</p>

		<p>The Honorable High Court, after examining Section 73 of the Sales Act, 1990, which states that the buyer's only duty is that if the payment of the amount for the transaction exceeds Rs. 50,000/-, then it shall be made by a crossed cheque drawn on a bank showing transfer of the amount of the sales tax invoice in favor of the supplier from the business account of the buyer, which the buyer had fully complied with. The Honorable High Court further held that according to Section 8(ca), the supplier was obliged to deposit the sales tax amount in the government treasury which he had neglected to do so. Therefore, the Honorable High Court held that the order of the learned Appellate Tribunal needed no interference and dismissed the reference</p>
<p>2022 PTD 1570</p> <p>Lahore High Court</p> <p>Messrs. Masco Spinning Mills Limited Vs. Federation of Pakistan and others</p> <p>Writ Petition No. 160280 of 2018</p> <p>Decided on March 02, 2022</p>	<p>Article 199 of the Constitution of Islamic Republic of Pakistan, 1973</p>	<p>The brief facts of the case are that the Petitioners were aggrieved by the charging of arrears of tax in utility bills for natural gas against a column titled "Arrears". Petitioners' counsel contended that in the absence of any prescribed column/procedure and determination of tax, no such recovery could be made as arrears.</p> <p>The Honorable High Court held that the law authorizes to recover tax arrears through utility bills, however, it has to be done through an independent column showing that the arrears are of tax and full disclosure of the particulars and necessary information for the recovery of tax is mandatory. Furthermore, the Honorable High Court held that there was no such disclosure of information therefore, the impugned action was declared illegal. The constitutional petition was disposed off accordingly.</p>
<p>(2022) 126 Tax 502</p> <p>Sindh High Court</p> <p>M/s. Dalda Foods Ltd Vs. Federation of Pakistan and another</p> <p>Suit No. 298 of 2020</p> <p>Decided on April 18, 2022</p>	<p>Section 46 of the Federal Excise Act, 2005</p> <p>Section 25 of the Sales Tax Act, 1990</p>	<p>The brief facts of the case are that the Plaintiff challenged the notice issued to him by the Commissioner of Inland Revenue dated 10.02.2020 under Section 46 of the Federal Excise Act, 2005, read with Section 25 of the Sales Tax Act, 1990, where the plaintiff case was selected for audit without assigning any reasons. Aggrieved by the said notice, the plaintiff filed this suit.</p> <p>The Honorable High Court, while giving its findings, relied on the judgement of the Divisional Bench of the Sindh High Court in the case of Wazir Ali Industries vs. Federation of Pakistan, reported in (C.P. No. D-4729/2021), wherein the same question of law was answered that the Commissioner of Inland Revenue is obliged to give reasons under subsection (2) of Section 25 for conducting an audit. The Honorable High Court, therefore, held that the impugned notice issued by the Commissioner of Inland Revenue to the plaintiff for the selection of an audit without disclosing any reasons is unlawful and has no legal effect.</p>
<p>(2022) 126 TAX 489</p> <p>Islamabad High Court</p> <p>Collector, Sales Tax & Federal Excise, Regional Tax Office, Islamabad Vs. Customs, Central Excise and Sales Tax,</p>	<p>Section 73 of the Sales Tax Act, 1990</p>	<p>The brief facts of the case are that the taxpayer (M/s. Rasuls), had adjusted input tax amounting to Rs. 39,977/- for the tax periods of August 2005 and June 2006, but sales tax had not been paid in accordance with the requirements of Section 73 of the Sales Tax Act, 1990. The Assistant Collector vide Order-in-Original dated 01.01.2008 had disallowed the said input tax adjustment. Aggrieved by the said order, M/s. Rasuls appealed before the learned Appellate Tribunal, which allowed the said input tax adjustment and upheld a penalty of Rs. 5,000/- on M/s. Rasuls for not showing compliance with the requirements of Section 73 of the Sales Tax Act, 1990, vide order dated 25.08.2008. Being aggrieved by</p>

<p>Appellate Tribunal, Islamabad and Another</p> <p>S.T.R. No.19 of 2008 and C.M. No. 1054/2019</p> <p>Decided on May 09, 2022</p>		<p>the order of the learned Appellate Tribunal, the Assistant Collector filed a reference application before the Honorable High Court.</p> <p>The question of law before the Honorable High Court was whether non-compliance with the requirements of Section 73 of the Sales Tax Act, 1990, would be sufficient for the Assistant Collector to disallow the input tax adjustment of Rs. 39,977/-, which was claimed by M/s. Rasuls. The other question of law before the Honorable High Court was whether non-compliance with the requirements of Section 73 would be sufficient for the Assistant Collector to order the recovery of the principal amount of Rs. 39,977/- along with a default surcharge and penalty.</p> <p>The Honorable High Court did not intervene with the order of the learned Appellate Tribunal and held that Section 73 of the Sales Tax Act, 1990, does not prescribe the penalty of disallowing the input tax adjustment for failure to show compliance with the requirements of Section 73. Consequently, the Honorable High Court answered the instant reference in the negative and in favor of the taxpayer.</p>
<p>2022 PTD 1624</p> <p>Islamabad High Court</p> <p>MOL Pakistan Oil and Gas B.V Vs. Federal Board of Revenue</p> <p>Writ Petition No. 3902 of 2021</p> <p>Decided on September 22, 2022</p>	<p>Rule 71 (1) of the Sales Tax Rules, 2006</p>	<p>The brief facts of the case are that the Petitioner's case was selected for audit for the tax year of July 2013 to June 2014. The officer of Inland Revenue issued a show-cause notice to the petitioner on 23.10.2018 pertaining to the inadmissibility of tax at Rs. 976,462,191/-, and the same was culminated in the Order-in-Original dated 29.12.2018. An appeal was preferred by the petitioner before the Commissioner (Appeals) against the Order-in-Original which upheld the contentions of the Commissioner of Inland Revenue, vide order dated 12.02.2019. Being aggrieved by the decision of the Commissioner (Appeals), the petitioner preferred an appeal before the learned Appellate Tribunal, which upheld the order and on the same date recovery was effected against the petitioner of the sum of Rs. 976,462,191/-. The issue before the Honorable High Court was that the recovery of the tax was held in violation of Rule 71 of the Sales Tax Rules, 2006.</p> <p>The Honorable High Court, after examining Rule 71 (1) of the Sales Tax Rules, 2006, which states that on the expiration of thirty days from the date on which the government dues are adjudged, the referring authority shall deduct the amount from any money owing to the person from whom such amount is recoverable, held that the period of thirty days was not allowed in the current circumstances of the case before initiating the recovery process. Therefore, the Honorable High Court held that the amount was unlawfully recovered and shall be refunded to the petitioner within thirty days.</p>

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