E-News & Views 2023

A Publication of KTBA

January 2023 to Dec 2023

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

FROM THE DESK OF THE PRESIDENT

My Dear Members,

I am pleased to present to you the comprehensive issue of the E-News and Views publication - Direct Tax for the full year 2023. This edition is the result of the united and tireless efforts of our esteemed convener, Mr. Hunain Mithani.

This issue contains all the relevant Income Tax Notifications, Circulars, and Legal Judgments issued throughout the year, serving as a ready reference for your legal writings and client communications. It is a valuable resource for all members of the Bar and the Tax fraternity.

Hunain, a young and dynamic professional, has demonstrated exceptional legal acumen and unwavering dedication to his work. His commitment to excellence is truly commendable.

I extend my heartfelt congratulations to Hunain and his dedicated team, who worked relentlessly to compile the entire year's data—an enormous task, especially considering the shift from quarterly to annual publication to cover pending publications.

Their efforts have not only closed the backlog for 2023 but have also paved the way for the upcoming 2024 edition, expected to be released in October 2025. Achieving this within such a short span of time is a remarkable accomplishment.

This publication stands as a testament to their hard work and will undoubtedly prove to be a highly beneficial and practical tool for all our members.

Message by;
President
Ali A. Rahim

FROM THE DESK OF THE CONVENER

Dear Fellow Members,

It is my great pleasure to present the consolidated Income Tax publication of E-News & Views by our Committee for the complete year 2023.

This issue compiles synopses of important Income Tax case laws reported during the year. It also contains summary of circulars and notifications issued under the Income Tax Ordinance, 2001 [Ordinance] during 2023.

I extend my sincere appreciation to the E-News & Views team for their dedication and diligence in compiling this publication. It is my earnest hope that this edition will serve as both a ready reckoner and an informative resource for the esteemed members of our bar, and contribute meaningfully to the improvement of tax practice and the advancement of the profession.

Here, I would like to take a moment to pay tribute to Mr. Khadim Rasool, our respected Co-Convener, who sadly passed away this year. His contributions, wisdom, and unwavering commitment to our Committee will always be remembered and cherished. May his soul rest in eternal peace.

Looking ahead, we are pleased to announce that the publication for the year 2024 will be issued by the end of October 2025, and a separate publication for the period ending June 2025 will be released thereafter.

Yours in service,
Hunain Mithani

DIRECT TAX CIRCULARS AND SROs

Direct Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
19 of 2023	Jan 27, 2023	Manual for Exchange of Information on request (EOIR)
01 of 2023-2024	July 21, 2023	Instructions regarding mode and manner for payment of tax u/s. 7E of the Ordinance on sales or transfer of Immovable property.
02 of 2023-2024	July 26, 2023	Finance Act, 2023-Explanation regarding important amendments made in the Ordinance
03 of 2023-2024	August 15, 2023	Partial modifications to the instructions regarding mode and manner for payment of tax u/s. 7E of the Ordinance on sales or transfer of Immovable property.
04 of 2023-2024	Sept 30, 2023	Extension for Date of Filing of Income Tax Returns for Tax Year 2023.

Direct Tax SROs

SRO REFERENCE	DATE	SUBJECT
72(I)/2023	Jan 25, 2023	Exemption of Income Tax on Goods for Relief Operations for Flood Affectees
76(I)/2023	Jan 26, 2023	Sharing of declaration of assets of Civil Servants Rules, 2023
82(I)/2023	Jan 30, 2023	Protocol amending the existing convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect of Taxes on Income between Pakistan and Tajikistan.
80(I)/2023	Feb 01, 2023	Sharing of declaration of assets of Civil Servants Rules, 2023
213(I)/2023	Feb 22, 2023	Addition of a new sub-rule (4) in rule 8 of the Seventh Schedule to the Ordinance
226(I)/2023	Feb 27, 2023	Addition of a new sub-rule (5) in rule 8 of the Seventh Schedule to the Ordinance
229(I)/2023	Feb 28, 2023	Insertion of new chapter XIIIA of the Income Tax Rule, 2002 under the title Record of Beneficial Owners.
290(I)/2023	Mar 06, 2023	Monetary Penalty Recovery Regulations for DNFBPs 2023
640(I)/2023	May 31, 2023	Regarding Rule 13N, Rule 19H of Income Tax Rule, 2002
648(I)/2023	June 02, 2023	Regarding Rewards Rules
687(I)/2023	June 14, 2023	The Inland Revenue Rewards Rules, 2021
745(I)/2023	June 19, 2023	Manual Income Tax Return for Individuals for Tax year 2023
746(I)/2023	June 19, 2023	Income Tax Return for salaried persons, AOPs, Companies & Business Individuals for Tax year 2023
747(I)/2023	June 19, 2023	Foreign Income and Assets for residence individuals under section 116A(I) of the Ordinance
776(I)/2023	June 27, 2023	Rule 13N, Rule 19H of the Income Tax Rules, 2002.
777(I)/2023	June 27, 2023	Foreign Income and Assets for residence individuals under section 116A(I) of the Ordinance
778(I)/2023	June 27, 2023	Regarding Income Tax Return for salaried persons, AOPs, Companies & Business Individuals for Tax year 2023
779(I)/2023	June 27, 2023	Regarding Manual Income Tax Return for Individuals for Tax year 2023

842(I)/2023	July 05, 2023	Regarding Amendment in clause (a) of Sub-rule(2) of rule 40D of the Income Tax Rules, 2002.
934(I)/2023	July 20, 2023	Regarding Amendment in clause (a) of Sub-rule(2) of rule 40D of the Income Tax Rules, 2002
1117(I)/2023	Aug 28, 2023	Insertion of new chapter XIIIA of the Income Tax Rule, 2002 under the title Record of Beneficial Owners.
1588(I)/2023	Nov 21, 2023	Tax on Windfall Profits of Banks.
1771(I)/2023	Dec 05, 2023	Draft Rules for Real-Time Access to Information and Databases regarding Documentation of Economic Transactions.
1845(I)/2023	Dec 22, 2023	Draft Rules for amendments in chapter VIIA for online Integration of businesses.
1846(I)/2023	Dec 22, 2023	Draft SWAPS Rules.

SYNOPSIS OF IMPORTANT CASE LAWS DIRECT TAXES

January 2023

CITATION	SECTION(S)	ISSUES INVOLVED
2022 PTD 1763 Islamabad High Court Messrs Pakistan LNG Limited vs Respondent(s): Federation of Pakistan, through Secretary Revenue Division, Ministry of Finance, Islamabad and 2 others Notice u/s 138 is mandatory	138, 138(1), 140 of the Ordinance	The taxpayer filed the instant writ petition before the High Court against the coercive measures, taken for recovery of tax demand confirmed by the CIRA, by attachment of taxpayer's bank account vide notice under section 140 of the Ordinance, without issuance of notice under section 138 of the Ordinance prior to recovery from bank account. Following question of law was put before the High Court: Whether there is any obligation under the provisions of the Ordinance to issue a notice under Section 138 of the Ordinance before affecting recovery in exercise of authority under section 140 of the Ordinance The HC decided the matter in favor of the taxpayer and held that the state owes following set of duties to the taxpayers: a) The duty to act in a just, fair and reasonable manner while upholding the right of a citizen under Article 4 of the Constitution to be afforded the protection of law, and to not take action detrimental to the property of a citizen under Article 4(2)(a) of the Constitution except in accordance with law read together with Article 24 of the Constitution that prohibits the State from depriving a person of his property save in accordance with law. b) The duty of the State to give fair notice to a citizen of any demand that the State has against the citizen to enable the citizen to discharge such demand without the need for the State to resort to use of its coercive powers, or to exercise the right to due process for determination of civil

		rights and obligations as guaranteed under Article 10-A of the Constitution. c) The duty to uphold the right of a citizen to access justice before an independent Tribunal and seek the adjudication of civil rights and obligations before such Tribunal prior to the State exercising its coercive authority to realize a claim against the citizen. Further, the State is under an obligation to inform the taxpayer prior to use of coercive means for recovery. Once a taxpayer files an appeal against the assessment order, the thirty-day period prescribed under Section 137(2) of the Ordinance becomes irrelevant (unless the appeal is filed and decided within such 30-days period). The purpose of Section 138(1) of the Ordinance is to provide the taxpayer with a time-period to discharge the due taxes. The requirement to issue Section 138(1) notice is thus mandatory where the taxpayer files an appeal against an assessment order and the Commissioner Appeals or the ATIR affirms the assessment order. The provisions of the Ordinance cannot be interpreted in a manner that frustrates the statutory right of appeal or that of filing a reference made available to a taxpayer aggrieved by the order of the Commissioner Appeals or the Tribunal
2022 PTD 1839 Appellate Tribunal Inland Revenue Lahore Messrs China National Electric Wire and Cable Import and Export Corporation, Lahore vs The Commissioner Inland Revenue, RTO, Lahore Order to be contested before Commissioner Appeals before approaching ATIR	127, 128, 129, 129(4), 131, 131(1), 122 of the Ordinance	The Appellate Tribunal Inland Revenue while invoking its jurisdiction under section 221 of Ordinance on its own motion observed that it had committed some grave mistakes of law in its earlier order. Rival parties along with an amicus curia (friend of court) appeared before the ATIR for its assistance. The learned DR contended that no written order has been passed by the CIRA under section 129 of the Ordinance; therefore, the ATIR was not legally justified to entertain appeal under section 131 of the Ordinance; consequently, the order passed by the ATIR has no legal sanctity and therefore, the same should be withdrawn ab-initio. Conversely, learned AR supported the order on the premise that the ATIR has a vast jurisdiction to entertain appeals under section 131 of Ordinance. The ATIR required the AR to assist / respond to the forum in respect of following question to decide the matter, which were replied in 'negative' by the Learned AR: (i) Whether any appeal can be entertained by the ATIR directly against order passed by department under section 122(5A) of the ITO, 2001? (ii) Whether any written communication/order was issued to the appellant after r approaching the concerned CIRA against the orders passed by the adjudicating officer under section 122(5A)?

		(iii) Whether the delay of more than 3200 days in filing of appeals under section 127 was communicated to the CIRA by the appellant? (iv) Whether without availability/ issuance of any written order by CIRA in terms of Section 127 read with Section 129 of the ITO, 2001, any disputed matter can be agitated before this Tribunal under Section 131 of the Ordinance? The ATIR held that the taxpayer should not have been entertained by this Tribunal under section 131 of the Ordinance as there was no written order in the field in terms of Section 129 of the Ordinance. The order passed by the ATIR was re-called and withdrawn.
2022 PTD 1844 Balochistan High Court Commissioner Inland Revenue vs Quetta Electric Supply Company Limited, Quetta Government subsidy, providing relief to end consumers, is not exempt	113, 133(5), Clause (102A) Part I of the Second Schedule of the Ordinance	M/s. Quetta Electric Supply Company is a limited company deriving income from the sale, transmission, and distribution of electric power. The return of income filed for tax year 2015 declared portion of revenue as exempt being Tariff Differential Subsidy (TDS) as such receipts were from government to the taxpayer company to provide relief to end consumers. The deemed assessment order for the subject tax year was amended by the Additional Deputy Commissioner Inland Revenue (ADCIR) on the ground that the amount received by the taxpayer from the Government as TDS are gross receipts within the meaning of "turnover'' as per section 113(3) of the Ordinance and hence chargeable to minimum tax under section 113 of the Ordinance (turnover tax). In the amended assessment order (the Order), the ADCIR made the entire sales chargeable to minimum tax and created tax demand accordingly. The taxpayer aggrieved with the order passed by the ADCIR filed appeal before the Commissioner IR (Appeals) Quetta (CIRA), who dismissed the appeal and upheld such order. The taxpayer being aggrieved by the order of the CIRA filed an appeal before the Appellate Tribunal (ATIR) that decided the matter in favor of taxpayer. The tax department in return filed income tax reference application before the Baluchistan High Court (the BHC) and raised the question of law that whether TDS constitutes 'turnover' and liable to the charge of turnover tax. The BHC answered the proposed question in affirmative and ordered in the following manner: 1. Subsidy is provided total exemption from tax under Clause (102A) of Part I of the Second Schedule to the Ordinance in the hands of recipient only if provided as bailout package to the recipient company and not in the case where subsidy is meant to provide relief to end consumers of the company. Further, Part I of the Second Schedule to the

		Ordinance provides exemption from total income and not from specific provisions which are covered under Part IV of the Second Schedule to the Ordinance 2. The ATIR also erred in treating TDS as trade discount, which is generally mentioned on sale invoices and not charged from the buyers; however, for the case in hand TDS is note trade discount but amount receivable from government. 3. The company received full price of electricity sold to consumers partly from consumers and partly from the Government. Hence, such total amount constitutes gross revenue on account of sale of electricity and is liable to turnover tax.
2022 PTD 1876 Islamabad High Court Commissioner of Inland Revenue, Zone-III, Regional Tax Office, Islamabad vs Pearl Security (Pvt.) Limited Messrs China National Electric Wire and Cable Import and Export Corporation Time limitation of 60 days for refund order is directory, not mandatory	133, 170, 170(4), 170(5)(b) of the Ordinance	The taxpayer filed refund application in respect of excess tax payments claimed vide the return of income. The CIR rejected the refund claims disagreeing with the basis on which the refund was being claimed; however, the rejection order was passed after sixty days period prescribed under section 170 (4) of the Ordinance. The taxpayer filed appeal before CIRA who decided the matter in favor of the taxpayer and held that the impugned order could not be passed after expiry of aforementioned prescribed time period. Department's appeal before ATIR was also rejected along the same lines. Feeling aggrieved the CIR filed the tax reference before the IHC. Following question of law was considered by the HC to decide the matter: • Whether the sixty days' timeframe under section 170(4) of the Ordinance was mandatory or directory in nature in presence of a remedy of filing an appeal before the CIRA under section 170(5)(b) of the Ordinance in case the refund order under section 170 is passed after expiry of sixty days? The HC decided the matter in favor of CIR as follows: a) As per the canons of statutory construction for interpretation of legal provisions, no provision of a law shall be interpreted in a way which would render another provision of law as redundant. b) Ignoring section 170 (5)(b) of the Ordinance altogether in the circumstances of this case is tantamount to making section 170 (5)(b) of the Ordinance as redundant. As, if the prescribed time period is considered mandatory there would be no reason to provide a relief in shape of appeal against the inaction of the CIR within prescribed time period because the said inaction is deemed to be resulting in a favorable refund order. c) The taxpayer is estopped from assuming a favorable refund order by default where it had statutory recourse against the department's inaction (i.e. filing of appeal before the Commissioner Appeals), which it opted not to pursue. The sixty days timeframe under section 170(4) to pass the refund order is directory for as long as

		the right of appeal under section 170(5)(b) of the Ordinance subsists
2022 PTD 1889 Balochistan High Court Commissioner Inland Revenue Zone-I, Regional Tax Office, Quetta vs Messrs Balochistan Onyx Development Corporation Ltd Definite information is required for proceedings u/s 122(5)	122, 122(1), 122(4), 122(5), 133 of the Ordinance	The case of the respondent, which is a private limited company engaged in the business of extraction and sales of marbles, was selected for audit under section 177 wherein tax demand was created vide order under section 122 (1) read with sub-section (5) of the Ordinance. The taxpayer filed appeal before Commissioner Appeals which was allowed and the order passed by adjudicating authority was set-aside. Tax Department's appeal before the Appellate Tribunal Inland Revenue Karachi was also rejected ; ATIR held that the CIR did not have the jurisdiction to select the case for audit under section 177,furthermore, the assessment was required to be amended subject to availability of definite information within the meaning of section 122(5) read with 122(8) of the Ordinance. Feeling aggrieved the tax department filed reference application framing following questions of law before the HC: a) Whether on the facts and circumstances of the case, the Learned Appellate Tribunal Inland Revenue was justified in holding that the CIR did not have the jurisdiction to select the case for audit under section 177(2) in view of the amendment made in Finance (Amendment) Ordinance 2009 dated 28-10-2009? b) Whether on the facts and circumstances of the case, the Learned Appellate Tribunal Inland Revenue was justified in holding that the CIR/DCIR may amend the assessment under section 122(1), (4)/(5) after fulfilling the requirement of law, subject to definite information within the meaning of section 122(5) read with 122(8) of the Income Tax Ordinance 2001 The HC decided the case in favor of the taxpayer company and held that: a) The case pertains to tax year 2009 and section 177 of the Ordinance, as it stood at that time, provided that a taxpayer was to be selected for audit by the CIR on the basis of statutory criteria developed by the Board or on the basis of statuary criteria under section 177(4) (sub section 4 of section 177 was omitted through the Finance Act, 2010). The selection of the case was made contrary to the prescriptions of the said section prevailing at that time and thus, has rightly been declared illegal and without lawful authority by the CIRA and ATIR. Perusal of section 122(5) of the Ordinance shows that information in a definite, final and conclusive form must already exist on record. Any information which is incomplete or requires further processing falls outside the domain of definite information and can be termed as departmental opinions or guesstimates. Perusal of order

		revealed that the proceedings were initiated without any definite information within the scope of section 122 (5) and merely on the basis of assumptions. The Commissioner Inland Revenue (Appeals) and Appellate Tribunal Inland Revenue have rightly recorded findings against the decision of adjudicating authority.
2022 PTD 1895 Appellate Tribunal Inland Revenue Commissioner Inland Revenue vs A.O. Clinic, Karachi Audit proceedings, without following the laid down procedures, are invalid	21, 111, 122, 128, 174, 176 and 214C of the Ordinance	The taxpayer is an AOP engaged in the business of running a hospital. The return of income was filed declaring income at Rs. 6,912,104, which was selected for audit under section 214C of the Ordinance. Audit proceedings were initiated and Information Document Request (IDR) under section 176 was issued by the Deputy Commissioner Inland Revenue (DCIR). Subsequently, audit proceedings culminated in passing the order under section 122(1)/(5) of the Ordinance. Being aggrieved with the treatment meted out, the taxpayer filed appeal before the learned Commissioner Appeals (CIRA) who held that the DCIR had not followed the audit proceedings/procedures as laid down by the appellate forums and thus quashed the order Feeling dissatisfied with the impugned order passed by the CIRA, the tax department filed appeal before the Appellate Tribunal (ATIR). The ATIR decided the appeal against the tax department and held as follows: 1. The DCIR has not followed the requirement of law in letter and spirit and passed the order without confronting the taxpayer all the charges/objection/issues raised in audit as to enable him to answer/explain them before invoking provisions of section 122 of the Ordinance. 2. The DCIR was under legal obligation to identify, specifically the nature of suppressed income and issue notice in terms of section 122(5) of the Ordinance highlighting the fact under which category the case falls. Nonissuance of such notice clearly meant that while passing the order DCIR was not in possession of definite information and, thus, the reason assigned for additions/disallowances while passing the amended assessment order, could not be termed as definite information. Therefore, the entire proceedings are void ab initio, and illegal. 3. No specific, separate and independent mandatory notice under section 111(1) of Ordinance issued and served upon the taxpayer. Therefore, the additions made under section 111 of the Ordinance are unjust, unfair, illegal and rightly deleted by the CIRA. 4. Where a law requires a thing should be done in a particular manner unless the same is done in the prescribed manner the same shall be illegal.

		5. No tax shall be levied or collected except by authority of law. A tax can only be imposed by a legislative Act and not on executive order. The law imposing a tax must be a valid law, that is, it should not violate any provision of the Constitution and should be within the legislative competence of the legislature. It will be valid only if it is made in accordance with the procedure prescribed by the statute.
Combined Order Sindh High Court Petitioners' vs Federation of Pakistan & Others Super tax cannot be levied retrospectively from tax year 2022.	4C of the Ordinance	Through the Finance Act 2022, a super tax was imposed from tax year 2022 and onwards at the specified rates on the income of every person with specific exclusions and conditions. The taxpayers through various petitions approached the Sindh High Court [the SHC] to challenge the vires of such super tax that it unlawfully vitiates vested rights in past and closed transactions, discriminatory and ultra vires to constitution. The SHC granted stay order(s) to such taxpayers subject to the condition that cheque of amount equivalent to super tax liability be submitted to the Nazir of the Court until any final decision by the SHC. Besides, the SHC also directed the Inland Revenue to grant extensions in time for filing of tax returns for tax year 2022 for such cases. The SHC through its consolidated short order covering all the filed petitions quashed the super tax for tax year 2022 and interpreted that the levy shall be applicable form tax year 2023. Further, after the interference of the Supreme Court of Pakistan, it was also specified that instant order of SHC shall remain suspended for a period of sixty days and, accordingly, securities furnished to the Court pursuant to the earlier interim orders shall also remain intact for the said period
Combined Order Sindh High Court Petitioners vs Federation of Pakistan & Others Parliament has legislative right to impose tax on foreign assets – petitions against CVT dismissed	Section 7 of the Finance Act, 2022	Through section 7 of the Finance Act, 1989, Capital Value Tax (CVT) was imposed on transfer of immovable properties, modaraba certificates, listed shares and motor vehicles, which was withdrawn gradually and with effect from April 19, 2020 CVT was abolished on all the assets. However, through Finance Act 2022, CVT was once again enacted with effect from tax year 2022. Subsequently, the Federal Board of Revenue notified Capital Value Tax Rules, 2022 (CVT Rules) as to the procedure for levy, collection, recovery, refund, revision & appeals alongwith Forms such as Statement of Foreign Assets, Motor Vehicles, Foreign Moveable Assets and Foreign Immoveable Assets. Various taxpayers, inter alia, possessing foreign assets through various petitions approached the High Courts of the country to challenge such CVT on the following grounds: 1. CVT enacted through Finance Act by way of an act of Parliament who has no legislative competence to levy

		such tax on foreign assets of the Petitioners, pursuant to the 18th Amendment to the Constitution, which has curtailed the power of levying any tax on immovable properties, being a provincial subject. 2. Article 142 of the Constitution empowers the Parliament to legislate on subjects enumerated in the Federal Legislative List only, whereas, there is a proviso to Entry-50 of the Federal Legislative List to the 4th Schedule of the Constitution that excludes the taxes on immovable property. The SHC dismissed the petitions and pronounced the following: 1. Article 142(c) of the Constitution when read in conjunction with Sub-Article (a) and Sub-Article (b) of Article 142, reflects that while enacting the 18th Amendment, the Provincial Autonomy though being expanded by only providing a Federal Legislative List in respect of competence of the Parliament. What is not within the competence of the Province will stand reverted to the Parliament. Further, Article 142(d) clearly provides that Parliament shall have exclusive powers to make laws with respect of all matters pertaining to such areas in the Federation as are not included in any Province. For the present purposes, it is not in dispute that the foreign assets including immovable properties do not fall in any area within the Province. 2. It is obvious that a person, who is a resident in Pakistan, is liable to tax in respect of his foreign income, earned outside the territorial jurisdiction of Pakistan, but in terms of Constitutional provisions the Parliament is empowered to levy taxes on foreign income of a resident person. 3. What is being taxed by the Parliament is the capital value of foreign assets, which now stands declared and is part of the Wealth Tax Returns of the Petitioners / resident person pursuant to the Foreign Assets (Declaration and Repatriation) Act, 2018, whereby the petitioners availed amnesty scheme and paid requisite tax. Therefore, there is a nexus of these properties with the income and wealth of the resident taxpayers and there appears to be no impediment or restriction for the Parliament to levy the tax in question. 4. As to the moveable assets, no specific ground raised before the Court which were not considered to be adjudicated accordingly
126 TAX 467 Lahore High Court	122(1), 122(5A), 133, 210, 221 & 221(4) of the Ordinance	Through the instant judgement, six Income Tax References (ITRs) were dismissed by the Honorable Lahore High Court (LHC) in favor of the tax department. The Appellate Tribunal Inland Revenue (ATIR) through the order (Original Order') dated March 14, 2012 annulled

M/s Kot Addu Power Company Limited vs The Commissioner Inland Revenue, Regional Tax Office, Multan, etc Mistake of law is rectifiable – rectification of order relying on past decisions of the superior courts is allowable		the amended assessment order passed by the Additional Commissioner (the officer) on the ground that the officer cannot amend a deemed assessment under section 122(5A) of the Ordinance for the want of jurisdiction. Later on through different judgments the higher fora including a five-member larger bench of the ATIR decided otherwise thereof, and allowed that an officer can amend a deemed assessment under section 122(5A) by authority of the delegated power of the Commissioner bestowed upon him under section 210 of the Ordinance. Subsequently, the tax department filed miscellaneous application before ATIR in support of the judgments to rectify its original order. The ATIR after considering the judgments held that it committed a mistake in the original order and passed rectified order dated June 29, 2015 and allowed the miscellaneous application to the tax department. Being aggrieved of the rectified order, the taxpayer filed the reference through which the following questions of law were placed before the LHC: i. Whether on the facts and in the circumstances of the case, the learned ATIR can lawfully revisit, review or recall its order under the garb of rectification in the terms of section 221 of the Ordinance? ii. Whether on the facts and in the circumstances of the case, the learned ATIR on the basis of judgments of the superior courts, which were subsequent in time, could lawfully rectify or recall its earlier order? iii. Whether on the facts and in the circumstances of the case, the learned ATIR in view of the specific provision as contained in section 221 of the Ordinance is not bestowed with the jurisdiction to recall its earlier order in the garb of exercise of powers of rectification, which shall tantamount to reviewing of earlier order, in the light of law laid down by the Hon'ble Apex Court in cases reported as 2007 PTD 967,1992 SCMR 687, 2000 PTD 306 and 2003 SCMR 401? iv. Whether on the facts and in the circumstances of the case, the order dated 29th June, 2015 passed by the learned ATIR on application by Revenue is ab-initio void and illegal? The case was decided in favor of the tax department. It was held by LHC that: - The core dispute purported with respect to exercise of jurisdiction under section 122(5A) of the Ordinance by Additional Commissioner to amend deemed assessment

		under section 122(1) is a settled question of law by the constitutional courts in various judgments, whereby it is held that Additional Commissioner under the delegated powers under section 210 of the ITO has authority under section 122(5A) of the Ordinance to amend a deemed assessment order. - The submissions by the appellant that decisions settling the issue of jurisdiction of the Additional Commissioner were made after the passing of original order are misconceived. - The learned counsels for the applicant had wrongly understood: that the original order cannot be rectified as the matter dealt therein has been closed by passing the original order; • that the time limitation to rectify the original order has lapsed as per section 221(4) of the ITO; • that the rectified order is a review of the original order. - The ATIR had rectified the mistake of missing out the applicability of law at the time of passing the original order and it had only implemented the pronouncement of constitutional courts which had resolved the controversy about the law and had not reconsidered the law and nor attempted to expound it. It had merely given effect by rectifying the original order to the presettled judicial pronouncements of the higher fora. - It is wrongly assumed that the rectification of mistake apparent from record could only be called to arithmetical or typographical mistake apparent on the face of the order, on the other hand a mistake apparent from record can also be of fact and law which can also be rectified and jurisdiction of rectification also embraces it. - Objection on the premise that the original order had attained finality and retrospective application of the decisions of the higher fora are not maintainable was also misstated as decisions on the jurisdiction of the officer under section 122(5A) of the Ordinance to amend a deemed assessment were not rare to find at the time when the original order was passed on March 14, 2012. - Jurisdiction of the ATIR to rectify the mistake of law apparent from record was well within limits of the law. The judgments referred by the learned counsels explained merely scope and extent of rectification jurisdiction in their own unique facts and circumstances and has no connection with the instant case scenario.
126 TAX 492 Lahore High Court	124, 124(1), 124(2), 124(3), 124(4), 129, 132, 133, 148(7), 221,	The tax department filed rectification application on the rejection of the appeal before the ATIR with ill intention to use it as tactic to avoid passing of appeal effect order

M/s Presson Descon International (Pvt.), Ltd. vs Federation of Pakistan, etc. Order passed by Commissioner Appeals to be given effect by the tax authorities, unless reversed or suspended by higher appellate forum	226, 226(b)(ii) of the Ordinance	under section 124(4) on the basis of exclusion to limitation period as provided in section 226(b)(ii) of the ITO. The petitioner filed a Writ Petition No. 10593 of 2022 in the Lahore High Court (LHC) for implementation of the order of the Commissioner Inland Revenue (Appeals) (CIRA) under section 124 of the Ordinance which attained finality as the appeal filed by the department before the Appellate Tribunal Inland Revenue (ATIR) against the order of the CIRA was dismissed being time barred and also the plea for condonation of time was not entertained for not filing any such application, and thereafter the tax department did not file any reference under section 133 of the ITO before the High Court The LHC decided the case in favour of the appellant and held that: - An order cannot be avoided from implementation under section 124 of the ITO unless it has been reversed by a higher Appellate Court or suspended by it at the time of proceedings. In the instant case appeal by the respondent-department to ATIR was rejected and consciously no reference to the court was filed against it, thereby, the order of the CIRA has attained finality. - Proceedings of rectification application before ATIR under section 221 of the ITO does not fall under section 226(b)(ii) of the ITO and it cannot be used as an excuse by the Commissioner to avoid implementation of section 124(4) and the Commissioner is mandated by the section to pass an appeal effect order.
126 TAX 548 Lahore High Court Federal Board of Revenue vs Federation of Pakistan, etc FBR to provide opportunity to the taxpayer to file his return as per his own interpretation	114, 120, 122, 153(1)(b) of the Ordinance. 12(2), O.XLVII of the Civil Procedure Code (V of 1908)	The petitioner (the tax department) filed a Review Petition in the Lahore High Court (LHC) for review of the order dated October 14, 2021 passed by the LHC in Writ Petition No. 63124 of 2021. In the earlier petition the LHC decided the matter in favour of the respondents (taxpayers). The taxpayer had contended before the Court that the tax department devised the return forms in such a manner that enforced the interpretation of section 153(1)(b) adopted by the tax department. The LHC considered that it is statutory right of every taxpayer to declare its income in the tax return under section 114 of the ITO according to his interpretation of law and the return so filed under the section 114 is treated to be assessment order under section 120. If in the form of return any option is blocked by the tax department or the options are arranged in such a manner that only favours tax departments interpretation of law, it will devoid the taxpayer from its statutory right to

		file return of income, according to his own interpretation of law. The stance of the taxpayer was accepted in the order dated October 14, 2021 against which the department seeks review of the order of the LHC under the plea that giving relief to the taxpayer would take away Commissioner's right of interpretation granted under section 122 of the ITO. The LHC allowed the review petition filed by the tax department and held that: - In Court's opinion the issue of the taxpayer was redressed by the proposal given by the tax department as they can compute their income according to their own interpretation. - One of the grounds for acceptance of review petition is the mistake of law or fact that by accepting taxpayers' stance, it may had compromised the department's right of different interpretation in the wake of section 122 of the ITO. - On the undertaking by the department that grievance of the taxpayers will be sufficiently addressed, the petition is allowed and that the taxpayer shall be given fair opportunity of being heard before prescribing the next return format and if the department rejected the taxpayers' proposals the reasons for rejection shall be communicated in writing. - The rights of the both department and taxpayer must be protected. The taxpayer has his own right under the ITO to compute his taxable income according to his own understanding and as compared to it, the department is also entrusted with the right to amend a deemed assessment order under section 122 according to its own interpretation.

FEBRUARY 2023

CITATION	SECTION(S)	ISSUES INVOLVED
2022 PTD 1927 Appellate Tribunal Inland Revenue Karachi Messrs New Dadu Sugar Mills (Pvt) Limited, Karachi vs The Commissioner Inland Revenue, Zone-II, LTU, Karachi Appeal cannot be filed twice against the same cause of action	131, 132 AND 138 of the Ordinance	The appellant filed an appeal before the Commissioner Inland Revenue Appeals (the CIRA) along with stay application. The CIRA rejected the stay application and, accordingly, the appellant approached the Appellate Tribunal Inland Revenue (the ATIR) against the stay rejection order of the CIRA by filing stay application with supporting appeal. The ATIR rather granting the stay directed the department not to proceed for recovery of tax demand and not to attach bank accounts unless 15 days prior notice under section 138 given to the appellant. The taxpayer again filed the misc. appeal before the ATIR against the same cause i.e. against the order of the CIRA whereby he rejected the stay application The ATIR dismissed the miscellaneous appeal and supporting appeal and pronounced the case in the following manner: - One who knocks the door of the court must come with clean hands, hence would not be entitled for any remedy / relief by filing frivolous, appeal especially where he had already availed remedy under the law. - The appeal shall not stand admissible before the ATIR, where the interim stay together with appeal had been decided already.
2022 PTD (Trib.) 1935 Appellate Tribunal Inland Revenue Lahore The Commissioner Inland Revenue, RTO, Lahore vs Messrs Habib Steel Re-Rolling Mills, Lahore Powers of CIRA to remand back the order	161, 205 and 129 of the Ordinance	The respondent / taxpayer is an AOP. The Assessing Officer (AO) examined return for tax year 2020 and monthly withholding statements filed under section 165 of the Ordinance. The AO noted that the taxpayer, being withholding agent, failed to deduct taxes while making payments against the various heads of expenses and thus, passed the order under section 161/205 of the Ordinance against the taxpayer. Being aggrieved by order of the AO, the taxpayer filed an appeal before the CIRA, who after hearing the matter, remanded the case to AO for de-novo consideration. However, the tax department preferred appeal before the ATIR against the order of the CIRA by taking plea that CIRA is not vested with power under the Ordinance to remand back an order of monitoring of withholding of taxes. The ATIR dismissed the appeal filed by the tax department and upheld the decision of CIRA in the following manner: - Section 129 of the Ordinance that deals with disposal of appeals by CIRA has two shades. Firstly, with respect to assessment order the CIRA may

		confirm, modify or annul such order. Secondly, for any other order the CIRA may make such order as it thinks fit meaning thereby CIRA has wide powers and broad discretion to pass an order including a remand of case to the AO, keeping in view the merits of the case. - Nature of proceedings under the relevant provisions of the Ordinance i.e. assessment provisions, charging provisions or collection provisions determine the way forward for disposal of appeal. As provisions under section, 161 of the Ordinance are of collection of recovery in nature and are distinct from assessment provisions and are not charging provisions, thus, CIRA has power to remand back to the AO the proceedings under section 161 of the Ordinance. - AO confronted the amounts appearing in the income tax return, without establishing that these were all payments. Neither specific default nor identified names and addresses of the parties form whom tax to be deducted were pointed out by the AO. Thus, CIRA rightly held that the order under section 161/205 of the Ordinance was passed without following statutory provisions and without properly considering the contentions of the taxpayer, thus, remanded the matter to AO for de-novo consideration.
2022 PTD 1942 Lahore High Court The Commissioner Inland Revenue, Zone-II, RTO, Lahore vs Shazia Zafar Unexplained income or assets shall be inquired through separate notice	111, 122 and 133 of the Ordinance	The tax department filed reference application against the order passed by the ATIR deleting the additions made under section 111. Following questions of law with respect to section 111 of the Ordinance i.e. 'Unexplained Income or assets' were presented before the Court: (i) Whether the learned Appellate Tribunal has erred in law by deleting the additions made under Section 111 of the Ordinance while holding that a separate and specific notice is required for addition under Section 111 when there is no specific provision in the Ordinance requiring separate notice under Section 111 of the Ordinance? (ii) Whether learned Appellate Tribunal IR has overlooked the scheme of law that Section 111 of the Ordinance cannot be read in isolation without making reference to Sections 122(1), 122(5)(ii) and 122(9) of the Ordinance? (iii) Whether the learned Appellate Tribunal Inland Revenue fell in error by failing to appreciate that in view of insertion of the 'Explanation' in section 111 of the Ordinance vide Finance Act, 2021 the issuance of a separate notice under section 111 was not required for amendment of an assessment under section 120 of the Ordinance? The Lahore High Court (LHC) through consolidated judgment decided the instant reference application along with connected reference applications as common questions of law and facts were involved in all the cases.

		The LHC answered the questions in negative i.e. against the department and in favor of taxpayers: - Based on plain reading of section 111 of the Ordinance, where unexplained income or assets, emerge to the Commissioner, the taxpayer is required to offer explanation that refers to proper mechanism of correspondence between applicant and respondent. Thus, notice and explanation are prerequisites to make additions under section 111 of the Ordinance otherwise such additions would be legally unsustainable. - Assessment could not have been amended until first the proceedings under section 111 of Ordinance had culminated in an appropriate order to allow the amendment of the deemed assessment order. - In respect of Explanation inserted in section 111 through Finance Act, 2021, LHC held that it is well-settled principle that all fiscal statues shall apply prospectively unless specifically and expressly provided
(2022) 126 TAX 567 Supreme Court of Pakistan Muhammad Tahir vs Commissioner Inland Revenue Applicability of the income tax law in tribal areas	170 of the Ordinance, SRO 118(I)/2001 dated February 10, 2011 Article 246(b)(i), 247(I) and 247(3) of the Constitution of Pakistan 1973	The Taxpayer claimed refunds for Tax Years 2011, 2012 and 2013 against deduction of tax on payments received for performing contract work in Northern Areas and Torghar District of Khyber Pakhtunkhwa, which in his view were part of Tribal areas in which provisions of the Ordinance are not applicable. The Officer Inland Revenue, after verification, allowed the refund claims made by the taxpayer against the work done in Northern Areas. However, remaining refund of Rs 3,742,405 was disallowed on the ground that tax deduction/refund claim relates to the work done in the area of Torghar District of Khyber Pakhtunkhwa (formerly known as Kala Dhaka) which has ceased to be a part of Tribal area, therefore, provisions of the Ordinance would apply on such district. Being aggrieved by the disallowance of refund, the Taxpayer filed an appeal before the Commissioner Appeals which was dismissed. Subsequently the ATIR held that the income tax withheld on contract work done in the District Torghar is to be refunded to the Taxpayer. Being aggrieved by the decision, the tax department filed the reference before the Peshawar High Court, which decided the matter in tax department's favor by stating that the District Torghar's status as a Tribal area ended after issuance of the abovementioned SRO. Since the subject District has now become a part of settled area in Pakistan, therefore, all laws including the Ordinance would now apply on District Torghar. The Appellant, being aggrieved by the decision of High Court, filed petition before the Supreme Court of Pakistan The Supreme Court of Pakistan dismissed the appeal filed by the Appellant on the basis that SRO 118(I)/2001 dated

Decision		February 19, 2011 was issued by the President of Pakistan through the powers vested under Article 247(6) of the Constitution for determining the status of an area. After issuance of the said SRO, the relevant area ceased to be a part of Provincially Administered Tribal Area, therefore, any tax levied/deducted in accordance with the provisions of the Ordinance was leviable / payable because the Ordinance stood extended to the said area. As such, tax refund claimed by the appellant is not justified.
(2022) 126 TAX 572 Supreme Court of Pakistan Messrs Kohinoor Spinning Mills Ltd. vs Commissioner Inland Revenue Matter that was not taken before lower judiciary, not to be decided by the Supreme Court / Tax implication on contribution to unapproved gratuity fund	21(e), 131, 133 of the Ordinance	Petitioner, M/s. Kohinoor Spinning Mills Limited filed tax reference before the Lahore High Court (LHC) wherein the question of law was raised that whether the ATIR was justified in disallowing the contributions made by the petitioner to an unapproved gratuity fund while computing income from business under section 21(e) of the Ordinance. The decision of ATIR was further confirmed by LHC through the order dated April 21, 2022. Being aggrieved, the petitioner filed civil petition before the Honorable Supreme Court of Pakistan wherein apart from challenging the order of the LHC, the petitioner claimed that it is exempt under clause (33) of Part-II of the Second Schedule to the Ordinance. The Supreme Court of Pakistan affirmed the decision of LHC on the basis that section 21(e) explicitly specifies that no deduction is allowed against a contribution to an unapproved gratuity fund while computing income from business. The Supreme Court further emphasized that only a matter that is already brought before the Tribunal or High Court would be considered by the Supreme Court and any new question of law would not be decided. The petitioner had not contended exemption claim before the ATIR or LHC, therefore, the Supreme Court will also not consider the same.
2022 126 Tax 579 Lahore High Court The Commissioner Inland Revenue, Lahore vs Tasneem Akhtar Agricultural income tax along with related penalties and default surcharge is subject matter of provincial law	111, 111(1) and 122(5A) of the Ordinance	The taxpayer declared the agriculture income in tax return for tax year 2014 Notices issued under section 122(5A) of the Ordinance seeking proof for payment of provincial agricultural tax and after series of proceedings, such declared amount was taxed under section 111 read with 122(5A) of the Ordinance. Being aggrieved, the taxpayer preferred an appeal before the CIRA that remained unsuccessful. The taxpayer then approached the ATIR and during proceedings, challan for payment of agricultural income tax to the provincial authority was produced. the ATIR vacated such order with the pronouncement that delay of payment and its consequences are not subject matter of the Ordinance. The department filed reference to the Lahore High Court (the LHC) against the said order of ATIR

		The LHC decided the instant reference application against the tax department and held as follows: - Agricultural income cannot be taxed by any interpretation under the Ordinance being beyond legislative competence of the Federation under entry 50 of fourth schedule to the Constitution. - The ATIR rightly held that penalties or default surcharge for late payment of agricultural tax could be imposed only under the relevant provincial law. - It is a settled proposition that a matter during proceedings cannot be taken to the past and closed transactions, therefore, if agricultural income tax is paid during pendency of an appeal before ATIR, then the effect of charging provisions in section 111 of the Ordinance would be obliterated
2022 126 Tax 584 Islamabad High Court Messrs Pakistan LNG Limited vs Federation of Pakistan Tax recovery shall be in the manner prescribed under the law	138, 138(1) and 140 of the Ordinance	The taxpayer filed an appeal before the the CIRA against the assessment order (AO) along with stay application, against the demand notice. The CIRA denied such stay application, the taxpayer then approached the ATIR seeking an injunction against recovery, which was duly granted. On the other hand, after some span of time, CIRA upheld the order of the AO and soon after such appellate order by CIRA, the taxpayer filed an appeal before ATIR and again obtained stay relief against the coercive recovery. On the date of appellate order, the department issued a notice to the bank to remit amount held on behalf of taxpayer under the threat of penal actions in case notice is not complied with and, accordingly, accounts of the taxpayer were attached and amount in dispute was recovered instantly. The taxpayer filed representation to the Chairman FBR seeking refund of the recovered amount in light of the directions of ATIR, wherein the tax department was barred from recovery till adjudication of appeal pending before the ATIR. Due to no response from the FBR, the taxpayer filed a writ petition before Islamabad High Court (the Court) seeking directions whether there is an obligation under the law to issue a recovery notice to taxpayer before effecting recovery from persons holding money on behalf of the taxpayer. The Court reprimanded the tax department, declared the recovery notice to the bank as devoid of legal authority and held as follows: - There is an obligation on behalf of the State to give taxpayer reasonable time through notice in writing to discharge tax liability adjudicated against him whereas taxpayer files an appeal before the appellate forum then tax department is supposed to be restrained from effecting coercive recovery measures until adjudication of appeals.

		- Under the law, there is a defined mechanism with specified timelines for recovery of disputed tax demands along with statutory right of appeals. That is to say firstly give reasonable time period for payment of due tax, secondly, issue notice direct to the taxpayer for tax recovery and the last resort to contact persons holding money on behalf of taxpayers. This mechanism has been shaded in detail under various judgments of the appellate authorities. However, in the instant case, this mechanism was not followed as recovery notice issued to the bank within thirty minutes of uploading of appellate order by the CIRA on IRIS portal. - The impugned notice being void legally is set aside and thus, the amount recovered from the bank accounts of the taxpayer be reimbursed or credited to the same bank accounts within a period of fifteen days. - The Court is of the view that the tax department is liable for abuse of authority and maladministration in the instant case and, therefore, refers the matter to the Federal Tax Ombudsman who shall revert with findings and recommendations to the Court within a period of three months

MARCH 2023

CITATION	SECTION(S)	ISSUES INVOLVED
2023 PTD 186 Sindh High Court Reliance Petrochem Industries (Pvt) Limited Issue accepted in proceedings u/s 122(5A) without verification does not constitute as an opinion	Section 65D, 177, 122(9), 174 of Ordinance	Taxation officer (TO) raised issue against the claim of tax credit u/s 65D of the Ordinance during assessment proceedings u/s 122(5A) and allowed the claim with the observation "subject to verification". TO subsequently conducted Audit u/s 177 of the Ordinance and asked to provide details for verifying the validity of the claim, which was not responded by taxpayer. TO issued show-cause notice u/s 122(9) for taking action u/s 174(2) and 177(10) for disallowance of tax credit, which was challenged by taxpayer before the High Court (HC), inter alia, on the grounds that it tantamount to change of opinion as the claim had already been allowed during proceedings u/s 122(5A). The HC held against the petitioner that there is no change of opinion on the part of TO as he earlier did not form any opinion during proceedings u/s 122(5A) and allowed the claim without any deliberation with the observation "subject to verification".
2023 PTD 223 Lahore High Court Rao Tariq Islam & Others Tax collection on functions u/s 236D from non-taxable persons held unconstitutional	Section 236D of the Ordinance	Advance tax is collected u/s 236D from every person doing a function or gathering. Various taxpayers including a widow filed constitutional petition against the aforesaid change before the HC inter alia on the grounds that it was confiscatory. The HC held in favor of petitioners that collection of advance tax u/s 236D from a person not liable to pay tax or to file return of income is without lawful authority and unconstitutional. It, however, referred the matter to the Attorney General of Pakistan and the FBR for making suitable amendments in the law within ninety days
2023 PTD 252 Lahore High Court Synthetic Products Enterprises Limited No adjustment of Income Tax refund	Section 138 of the Ordinance	TO issued recovery notice u/s 138 of the Ordinance for the payment of federal WWF in cases where income tax refund arising out of return was adjusted against it. The rationale for issuing the notice remained a Circular dated May 25, 2021 issued by the FBR whereby field officers were advised to refuse the adjustment income tax refund against federal WWF liability on the ground that WWF is not a "tax" as per the Supreme Court's (SC) judgement of November 2016 in the case of East Pakistan

against WWF on or after March 28, 2022		Chrome Tannery and that Section 170(3) permits adjustment of income tax refund only against federal **tax** liabilities. Contrary to the above Circular, the FBR had previously issued a Circular on February 17, 2000, wherein the FBR itself allowed the adjustment of WWF. The old circular remained in field despite the issuance of Circular of May 25, 2021 until the old circular was actually withdrawn by the FBR through another circular issued on March 28, 2022. Taxpayer filed petition before HC against the notice. The HC held that the Circular letter of May 25, 2021 is legal but cannot be applied retrospectively to an income tax refund already adjusted before the SC's judgement. The HC further observed that the above referred judgment of the SC is also not applicable retrospectively to income tax refund already adjusted against WWF in the light of the circular letter February 17, 2000, which has not been declared illegal and, therefore, holds statutory authority uptil March 27, 2022 i.e. upto the date when old circular was in field. It was further held that despite the SC's judgement and the aforesaid circulars, any income tax refund adjustment by taxpayer against WWF liability through return cannot be challenged, where no adjustment has been made by TO through automated processing as per sub-section (2A) of Section 120 within six months of filing of return.
2023 PTD 312 Lahore High Court CIR, Lahore v Mrs. Tasneem Akhtar Agricultural Income Tax (AIT) can be paid during pendency of appeal to avoid addition u/s 111(1)(a)]	**Section 111(1)(a) of the Ordinance**	TO made addition under Section 111(1)(a) on the ground that evidence of payment of provincial agricultural income tax was not given. The HC held that where evidence of payment of AIT is not produced, an addition could be made u/s 111(1)(a) under the head "Income from other Sources" and not as "agricultural income" which is beyond the jurisdiction of income tax law and that the Tribunal has rightly deleted the addition on the basis of production of evidence of payment of AIT before the Commissioner Appeals as the issue was alive and not a past and closed transaction during the pendency of appeal. Regarding the levy of default surcharge and penalty for late payment of AIT, it was held that these could be levied under the relevant provincial AIT law alone and not under the income tax law.
127 TAX 317 Supreme Court	Section 111(1)(d) of the Ordinance	TO made addition relating to suppressed income under Section 111(1)(d) on gross receipt basis instead of net income basis. Department contended that Section

CIR, Lahore v Mian Liaqat Ali Addition u/s 111(1)(d) cannot be made on 'gross receipt' but 'income' basis; & FBR's guidance required regarding different time limits u/s 111(1)(d) & 122(5)		111(1)(d) is independent of Section 122(5) and that the time limit specified u/s 122(2) is not applicable to any addition u/s 111 read with recently inserted proviso. The SC held that it is income (after deduction of expenses) instead of gross receipts, which is to be added u/s 111. The rationale of the SC was that although the word "receipt" is used u/s 111(1)(d), however, Section 111(1)(d) shall be read in conjunction with Section 122(5) which speaks of "income". SC further directed the FBR to issue guidance as under which circumstances action would be taken u/s 122(5) or u/s 111(1), however, it is clarified that if an action is to be taken within time limit specified u/s 122 then action must be taken in compliance with the very section as otherwise clear reason must be specified by TO for ignoring Section 122. Moreover, if TO intends to take action beyond time limit specified u/s 122 and if taxpayer shows that the information on the basis of which action is intended to be taken by TO was available or should be reasonably expected to be available to the TO, then the TO would be required to justify the belated action.
127 TAX 403 Sindh High Court CIR v Pakistan Petroleum Limited Amount of disallowance of excess perquisites determined on employee basis	Section 24(i) of the Income Tax Ordinance, 1979	To make a disallowance u/s 24(i) of the repealed Income Tax Ordinance, 1979 in respect of excess perquisite on adhoc basis without determining excess perquisite paid to each employee as required by law. The Tribunal deleted the addition. The HC affirmed the deletion by stating that addition should have been made after determining excess perquisite for each employee and that the law does not permit any addition on adhoc basis in slip shod manner.
2023 PTD 96 Appellate Tribunal Inland Revenue The Commissioner Inland Revenue, Zone-X, RTO-III, Lahore vs Muhammad Iqbal, Prop. Bright Star	111, 170 and 122 of the Ordinance	The taxpayer, being respondent in the instant case, is an individual who derives income from the manufacturing of motorcycle parts. The taxpayer in the original return of income of Tax Year 2007 declared income of Rs. 495,000. The taxpayer subsequently revised his return of income keeping the income same and further declared expenses of Rs. 5,545,000 and purchases of Rs. 34,750,312, resulting in a refund of Rs. 1,093,804 in the return of income. The taxpayer also filed a refund application in this regard. While processing the refund application, Tax Officer (TO) issued notices to the taxpayer after observing a difference between the purchases declared in the return of income and as declared in the sales tax returns filed by the taxpayer for the relevant tax periods. The taxpayer in response to the notice issued challenged the jurisdiction of

Engineering Works, Lahore Notice for amendment of assessment shall be issued by lawful jurisdiction / unexplained income or assets shall be inquired through separate notice		Enforcement and Collection for issuing the notice. The TO passed order rejecting the stance of the taxpayer and refund application filed. The taxpayer being aggrieved by the decision of TO filed appeal before Commissioner Appeals (CA) challenging the jurisdiction of Enforcement and Collection to furnish notice to the taxpayer and pass order in this regard. The CA passed order in favor of the taxpayer and directed to issue refund which the department accordingly did. Subsequently, Additional Commissioner Inland (ADCIR) issued notice to the taxpayer for amendment of assessment under section 122(5A) of the Ordinance. The taxpayer submitted detailed responses against the notice received after which the ADCIR passed order for amendment of assessment under section 122(5A) making the difference between purchases as per sales tax returns and income tax returns as unexplained source of investment under section 111(1)(d)(i) of the Ordinance. Hence, total income of the taxpayer after charging of WWF was computed at Rs. 10,869,476. The taxpayer filed appeal before CA which was decided in favor of the taxpayer. Being aggrieved, the tax department filed appeal before the ATIR on the grounds that the authority has lawful jurisdiction over the case and that the learned CA was not justified to hold that the declaration filed by the taxpayer under tax amnesty scheme 2008 covered the unexplained income. Decision: The ATIR decided the case in favor of the taxpayer on the following basis: i) Zone-X does not hold jurisdiction over manufacturers of automobiles and the individuals who are Directors in a company. This stance was also clarified by the Commissioner of Zone-VIII through letter dated 29.06.13. ii) The amended assessment order was passed by ADCIR on a public holiday which makes the order unlawful. Reliance in this regard was placed on ATIR's decision in case of **2015 PTD 408**, whereby the order passed on a public holiday was declared as unlawful and was annulled. iii) The addition in income was made on the basis of section 111(1)(d)(i) through which addition can be made if the taxpayer concealed / furnished inaccurate income, suppressed any production, sales or any amount chargeable to

		tax. However, in the present case, the assessing authority made addition of the amount of alleged suppressed purchases which obviously does not fall under the segment of income as provided. iv) Clause (d) in sub-section 1 of section 111 was inserted in Tax Year 2012, whereas the proceedings relate to Tax Year 2007. Retrospective application in this respect is not permissible. In this regard, reliance was placed on ATIR's judgment in case of **2013 PTD 1557**. v) A separate notice under section 111 is required to be issued to make addition in income under the said section which is not evident in the instant case. Reliance in this regard was placed on the decision of Lahore High Court and ATIR in cases of **2019 PTD 1828** and **2013 PTD 900**, respectively.
2023 PTD 146 Lahore High Court Mubashir Yameen vs Assistant/Deputy Commissioner Inland Revenue, RTO, Rawalpindi and Others Issuance of recovery notice under Section 138 is mandatory before initiation of recovery proceedings under Section 140	Section 138 and 140 of the Ordinance	In the instant case, the Assistant / Deputy Commissioner Inland Revenue (A/DCIR) passed order against the taxpayer creating tax demand of Rs. 1,956,342. Pursuant to the order, demand notice was also issued under section 137(2) of the Ordinance. Being aggrieved, the taxpayer filed appeal against the order of A/DCIR before the Commissioner Appeals (CA) which was rejected by the CA. The taxpayer filed second appeal before the Appellate Tribunal Inland Revenue (ATIR). While the appeal before the ATIR was pending, the Inland Revenue Officer Audit and Enforcement issued notice under section 140 of the Ordinance directing the Bank to attach accounts of the taxpayer and handover the amount of tax demand to the department. Consequently, the Bank withdrew an amount of Rs. 600,000 from taxpayers account. Being aggrieved, the taxpayer filed petition before the Lahore High Court (LHC). **Decision:** LHC decided the case in favor of the taxpayer and directed the ATIR to decide the matter within sixty days of the order and instructed the tax department to refrain from taking coercive measures until the order of ATIR. The decision was made on the following basis: - Notice under section 138 of the Ordinance for recovery of tax demand within a specific time period is required to be issued by the department before proceeding with recovery through attachment of bank accounts. Reliance

		in this regard is placed on the decisions of LHC in cases of **2021 PTD 162** and **2016 PTD 1799**; and - Under Article 4 of the Constitution, it is an inalienable right of the citizen to be treated in accordance with law. Also, the fair trial and due process are the fundamental rights of the every citizen of Pakistan under Article 10-A of the Constitution but in the instant case no notice under Section 138 was served before invocation of Section 140.
(2023) 127 TAX 284 Lahore High Court Pepsi Cola International (Pvt) Limited vs Federation of Pakistan, etc.	Sections: 161, 161(1B), 162, 173(4) & 174(3) of the Ordinance and Rule 44 & 44(4) of Income Tax Rules	The petitioner challenged the orders passed under section 161 of the Ordinance by filing petitions before the Lahore High Court (LHC) related to the vires of the Commissioner's jurisdiction under section 161 and 162 of the Ordinance, adjudicated. The LHC disposed of the petition in the following manner: - Show cause notice issued and impugned order passed are absolute contrary to the earlier settled positions by the Courts wherein it was held that assesse can only be declared as assesse in default, if tax required to be deducted from a payment made to a person has not been paid by such person. However, in the presence of sufficient evidence of failure to deduct/collect tax, the person being withholding agent may be served with imposition of default surcharge and penalty, - When any proceedings are finalized without fulfilling prescribed legal obligations, then the final order passed remains susceptible to judicial review in constitutional jurisdiction. - It is the duty of tax administration to ensure the periodic filing of withholding tax statements within the time specified by the Statute. This action would cater the occasions of issuing notices of monitoring of withholding of taxes for tax years beyond six years. - It is for the department to make the most of the information provided to it and to pass speaking orders on the basis of which it will determine whether there is a failure to pay the tax collected or deducted without placing any burden on the taxpayer and its ability to produce the relevant documents. - The time limit prescribed under section 173(4) should have been met, had the Commissioner fulfilled the duty of ensuring compliance of filing of statements under the Ordinance.

APRIL 2023

CITATION	SECTION(S)	ISSUES INVOLVED
2023 PTD 316 **(Islamabad High Court)** **Askari Bank Limited** ***Decision of ATIR relating to a year is persuasive and not binding in subsequent year***	Section 161 read with 124A of the Ordinance	Taxation officer (TO) raised show-cause notice (SCN) for initiating proceedings u/s 161 of the Ordinance in respect of payments to Armed Forces exempt from tax under section 49 of the Ordinance being part of the Federal Government. Taxpayer challenged the SCN before High Court on the grounds that this issue was raised in past tax years which was decided by Appellate Tribunal Inland Revenue (ATIR) against the department which in taxpayer's view has attained finality and was binding on the TO. High Court dismissed the petition filed by taxpayer and held that decision of Tribunal has persuasive force and does not have a legally binding precedence. High Court has noted that reference was filed by the department before High Court against the decision of ATIR. It was further held by High Court that the principle of res judicata is not applicable in income tax matters except in certain restricted circumstances. It is pertinent to mention that taxpayer has challenged the notice itself thus depriving taxation officer to even make an attempt to differentiate the present case from the one on which ATIR has given its decision. Please note that an issue is generally raised through a notice and then dropped in the light of a decision of Tribunal favourable to taxpayer as per section 124A, which is applicable to assessment as well as other orders in our view, by stating in the order that issue can be raised again if it is later decided by higher appellate fora against the taxpayer.
2023 PTD 351 **(Islamabad High Court)** **Army Welfare Trust** ***Income of taxpayer is not exempt as per the***	Section 80(2)(b)(ii) of the Ordinance	Taxpayer has argued that it is not liable to tax in respect of its income due to the concept of "diversion of income" as another entity i.e. "WARD" is entitled to all of its income. High Court held that concept of diversion of income is not specifically recognized under the income tax law and even otherwise it is applicable only where due to an obligation an amount is required to be diverted before the accrual of

concept of "diversion of income" ***Society formed and registered under the Societies Registration Act is a "company"*** ***Bad debts cannot be claimed unless debts have been written off in accounts***		income and not where an amount is applied to discharge an obligation after an income is already accrued to taxpayer. High Court further held that the concept of diversion of income is not applicable in the case of taxpayer, as WARD is not a legal entity and that there is no legal obligation on the part of taxpayer to transfer all of its income to the WARD and the Chairman of the governing body of taxpayer entity merely expends all or some of the taxpayer's income in welfare activities through WARD, however, this does not create any overriding title in favour of WARD over the taxpayer's income. High Court held that taxpayer being a society formed and registered under the Societies Registration Act, 1860 falls under the category of a "company" in terms of section 80(2)(b)(ii) of the Ordinance being a body corporate and a legal and juristic person. High Court held that the first condition for claim of bad debts under section 29 of the Ordinance is that the debts have been written off in accounts.
2023 PTD 390 **(Islamabad High Court)** **CIR v International Wireless Communication Pakistan Limited** ***Exemption certificate issued cannot be retrospectively rectified u/s 221***	Section 152(5A) and 221 of the Ordinance	Commissioner Inland revenue (CIR) issued exemption certificate u/s 152(5A) allowing taxpayer to make a payment to a foreign company without deduction of tax. CIR later cancelled the exemption certificate u/s 221 of the Ordinance on the grounds that treaty provisions were earlier misinterpreted by the CIR. Commissioner Appeals and ATIR decided the issue against the department on the grounds that subsequent action of CIR tantamount to change of opinion rather than rectification of any mistake. It was further held that exemption granted could not be rectified retrospectively once payment is made in the light of the said exemption. High Court affirmed the action of appellate fora below on this matter and did not feel any need for interference.
2023 PTD 411 **(Lahore High Court)** **Allied Bank Limited** ***CIR can delegate all powers to ADCIR u/s 210***	Section 210 of the Ordinance	Taxpayer has argued that CIR cannot delegate his power to amend an order u/s 122(5A) to Additional Commissioner Inland Revenue (ADCIR) as section 122(5A) requires CIR to consider the question of erroneousness and prejudicially himself. HC held that if taxpayer's aforesaid view is accepted then it would mean that two orders would be required to be passed; one by CIR regarding his consideration; and the other by ADCIR and that if mind is already applied by CIR regarding erroneousness and prejudicially then there is no need to delegate the matter to ADCIR.

		Reliance was placed by High Court on the decision of Islamabad High Court in the case of Pakistan Tobacco Company Limited reported as **107 TAX 29** wherein it was held when CIR delegates his power u/s 210 to his sub-ordinates, such power includes power of scrutiny of assessment, proper application of mind and amending assessment order.
W.P. NO. 52559 OF 2022 **(Lahore High Court)** **Muhammad Osman Gull** ***Levy of tax on immovable property under section 7E is unconstitutional***	Section 7E of the Ordinance	Section 7E was inserted in the Ordinance through the Finance Act, 2022 so as to tax fair market value of an immovable property. The said legislation has been challenged before the High Court on various grounds. The High Court held the following: • The Federal Legislature is not competent to tax fair market value of immovable property as an income under Entry 47 of Fourth Schedule to the Constitution. • Provisions of section 7E is read down to save taxation on capital value of assets which is within the competence of the Federal Legislature under Entry 50 of Fourth Schedule to the Constitution. However, assets would be required to be valued as a whole rather than separately and taxed on declared value rather than fair market value with power for taxation officer to later amend on the basis of fair market value. Curative legislation is expected to harmonize section 7E with other provisions of the Ordinance. • Exemptions given under clauses (i), (iii) and (iv) of section 7E(2)(d) have been declared as unconstitutional being discriminatory. The Legislature is expected to remove expropriate and confiscatory aspects in section 7E. It is pertinent to mention that Sindh high Court in the case of Hakimsons (IMPEX) Private Limited and others reported as **127 TAX 247** has earlier held the section 7E of the Ordinance as constitutional. The said judgment has been challenged by the taxpayers before the Supreme Court, which is pending for hearing.

May 2023

CITATION	SECTION(S)	ISSUES INVOLVED
2023 PTD 492 Lahore High Court Commissioner Inland Revenue Lahore vs Messrs Descon Engineering Limited, Lahore Section 4(4) of WWF Ordinance, 1971 requires WWF to be charged through a written order that may be finalized along with the assessment proceedings	Sections: 120, 122, 133, and 177 of (the Ordinance) and Rule 2(f) and 4 of the Workers Welfare Fund Ordinance, 1971 (WWF Ordinance)	The taxpayer, being an industrial establishment in the instant case filed its return of income for Tax Year 2006 along with the proof of payment of WWF for the said tax year. The return of income of the taxpayer was selected for audit under section 177 of the Ordinance. The tax officer while passing an order for amendment of assessment under section 122 of the Ordinance levied WWF charge of Rs. 11,885,126. The taxpayer filed appeal before the Commissioner Appeals on the basis that the amount of WWF paid by the taxpayer was not confronted in the show cause notice issued and the charge was directly imposed in the order passed for amendment of assessment. The Commissioner Appeals remanded back the case for reassessment with the directions to provide an opportunity of being heard to the taxpayer. Discontent with the decision of the Commissioner Appeals, the taxpayer filed an appeal before the Appellate Tribunal, which decided the case in favour of the taxpayer on the basis that a written order under section 4 of the WWF Ordinance shall be passed and deleted the tax demand created through the order of the assessing officer. Being aggrieved by the decision of the Appellate Tribunal, the tax department filed reference application before LHC raising the following questions of law: - Whether on the facts and circumstances of the case, learned Tribunal was justified to delete the amount payable on the ground that no written order was passed under section 4 of WWF Ordinance, 1971 whereas taxation officer assessed income vide written order under section 122(1) of the Ordinance and computed amount payable in the said Order? - Whether on the facts and circumstances of the case, the framework of WWF Ordinance requires independent adjudication of assessed income under the Ordinance followed by an independent separate order for determination of amount payable to fund under WWF Ordinance, whereas the said amount is to be computed on the basis of income assessed under income tax law and recovery of same is also to be made under said law? LHC in its decision held that section 4 of WWF Ordinance provides for the mode of payment of WWF and recovery from an industrial undertaking. Sub-section 4 of section 4 specifies that where an assessing officer

		does not agree with the amount paid as WWF by an industrial undertaking, he shall determine the actual amount payable through an order in writing. The assessing officer, however, shall observe principle of natural justice and fair trial especially the principle of audi alteram partem i.e. no one should be condemned unheard before passing an order. It is required to issue a proper notice confronting the matter and provide a fair chance of explanation. However, it was held that a separate notice is not required to confront the levy of WWF and the same can be finalized during the assessment proceedings. Reference in this regard was placed on the decision of Karachi High Court in the case of Commissioner of Income-Tax vs. Messrs. Kamran Model Factory (2002 PTD 14). Based on the above, LHC confirmed that the Appellate Tribunal rightly deleted the WWF demand created by the assessing officer without the matter being confronted in the show-cause notice. It was also held that WWF can be levied and finalized along with the assessment proceedings.
2023 PTD 467 Appellate Tribunal Inland Revenue Messrs KBS Steel, Gujranwala vs the Commissioner Inland Revenue, LTO, Lahore Commissioner Appeals has the power to only confirm, modify or annul the assessment order	35, 111, 122 and 129 of the Ordinance	Show-cause notice was issued to the taxpayer in respect of a difference identified between the closing stock declared in the Annexure-F of sales tax return for the month of June 2019 with that declared in the return of income for the relevant tax year. Closing stock declared in the return of income was Rs. 185 million less than the stock declared in the sales tax return. The notice required the taxpayer to explain the source of the excess purchases failing which purchases would be added to his income under section 111(1)(c) of the Ordinance. After submission of response by the taxpayer, the tax officer passed order under section 122(1) of the Ordinance with an addition of Rs. 185 million in the income. Being aggrieved by the decision of the assessing officer, the taxpayer filed appeal before the Commissioner Appeals, who remanded back the case for denovo proceedings. The taxpayer preferred an appeal before the Appellate Tribunal on the following grounds: - Commissioner Appeals only has the authority to confirm, modify or annul the assessment order and cannot remand back the case to the original assessing officer to fill out lacunas and improve flagrant errors therein; - No definite information was acquired through audit or otherwise as it is not mentioned in the impugned order or the notice under section 122(9) of the Ordinance without which jurisdiction under section 122(5) of the Ordinance cannot be exercised; - Non-issuance of separate notice for making addition on alleged suppressed purchases under section 111(1)(c) of the Ordinance is illegal; and

		- Annexure F of the sales tax return cannot be made basis for calculating stocks at year end for income tax purposes due to certain legal flaws and factual lacunas. The Appellate Tribunal decided the case in favour of the taxpayer. The decision was made on the basis that section 129 of the Ordinance limits the power of Commissioner Appeals only to confirm, modify or annul the order where an assessment order is passed. Reference in this regard was placed on judgments in the case of 2017 PTD 1663 and 2013 PTD (Trib.) 1288. It was further held that no addition under section 111 can be made without independent, specific and separate notice with specification of relevant clauses and subsection of section 111 of the Ordinance. Reliance in this regard was placed on the judgment of Lahore High Court in case of Commissioner Inland Revenue, Faisalabad vs. Faqir Hussain and other (2019 PTD 1828) wherein it was held that non-issuance of proper notice in order to invoke provisions of section 111 cannot be taken lightly and its non-compliance may lead to render the proceedings not in conformity with or according to the intent and purpose of law. Regarding the statistical infirmities, it was held that annexure "F" is only meant for summary of input tax and excess carry forward amount of sales tax credit. None of the provisions of the Sales Act, 1990 or of the Ordinance has purported to deem these figures of carry forward summary to be the closing stocks as it has miserably failed to serve as a stock statement of a taxpayer/appellant. On the basis of above, the taxpayer's appeal was allowed and order of the officer was vacated.
2023 PTD 556 Peshawar High Court Messrs Sohail Steel GL Sheet Company vs Federation of Pakistan through Secretary Finance and Revenue Division, Islamabad Clarification on income tax and sales tax at import stage for businesses falling under Provincially	148 and 159 of the Ordinance	Various taxpayers running their businesses/industries being registered with Federal Board of Revenue (FBR) within the Provincially Administered Tribal Area (PATA) by manufacturing/selling/ purchasing different kinds of goods and were free from imposition of income tax and sales tax by way of applicable provisions of the Ordinance and the Sales Tax Act, 1990 (the Act). During the period of such exemption, the Peshawar High Court held in a judgment that exemption from income tax leviable at import stage would be available subject to exemption certificate from FBR. Subsequently, FBR through circular standardized procedure for operationalization of exemptions under the Ordinance. Meanwhile, consequent to 25th amendment in the Constitution of Pakistan, all such provisions of the Ordinance that entitled the subject persons exemption from tax were omitted except the deduction or collection of some specified taxes under the Ordinance. However,

Administered Tribal Areas		due to unavailability of relief in the form of an exemption certificate despite the fact that every import consignment passes through a monitoring process, the petitioners approached the Court with the following prayers to invoke constitutional jurisdiction in the instant cases: - Exemption certificate from tax collection at import stage shall be issued on one time basis valid up to June 30, 2023. - Absence of above exemption certificate shall not affect the right of exemption from levy of sales tax under Entry no 151 of the Sixth Schedule of the Act. - Circular describing the mechanism for claiming exemption from levy of income tax at import stage shall be declared void being contrary to the procedure laid down under Entry no 151 of the Sixth Schedule of the Act. The Peshawar High Court dismissed all the connected petitions involving common question of law and facts in the following manner: - After promulgation of Finance Act 2021, relevant provisions or clauses under the Ordinance have been omitted, therefore, subject taxpayers are required to obtain income tax exemption certificate under the Ordinance in the manner prescribed by FBR. - Exemption from levy of sales tax under Entry no 151 of the Sixth Schedule of the Act is intact and has no connection with collection of income tax at import stage in the instant cases. - Relaxations have already been announced with respect to conditions of Installed Capacity Determination Certificate that was conceived as difficult compliance requirement, therefore, prayer regarding the procedural hindrances is infructuous.
(2023) 127 TAX 1 Appellate Tribunal Inland Revenue, Lahore Bench, Lahore Messrs The Bank of Punjab, Lahore vs the Commissioner Inland Revenue, LTU, Lahore Monitoring of withholding taxes shall be in the	18(3), 22(12), 151, 161, 161(1), 161(2), 122(5A) and 221 of the Ordinance	The Assessing Officer (AO) examined audited accounts of the appellant and issued show cause notice to reconcile the tax deduction on payment of expenses for the tax year 2007 to 2012. The appellant raised the legal objections and filed replies on merit which were turned down and accordingly orders were passed by the AO. In addition, the appellant was served assessment order for tax year 2007 on account of alleged deduction of depreciation of leased assets against taxable income of the subject tax year. Based on factual position, the appellant filed rectification application which was also rejected by the AO. Being aggrieved by orders for both monitoring proceedings and assessment proceedings of the AO, the appellant filed appeals before the CIRA. The CIRA dismissed the order in case of monitoring proceedings for tax year 2007 and remanded back the similar orders for tax

prescribed manner. Assessment proceedings shall also be conducted with judicious application of mind		year 2008 to 2012. Whereas CIRA confirmed the assessment order of AO and rejection of rectification application also. Subsequently, both department and the taxpayer filed appeals against the decisions of CIRA before the Appellate Tribunal Inland Revenue (the ATIR). The ATIR adjudicated the subject appeals as under: - For tax year 2007, in respect of monitoring proceedings, the AO rightfully invoked the provisions of the Ordinance by identifying and confronting the parties in respect of which tax was not deducted. Accordingly, the burden of proof was on appellant to prove why tax was not deducted which it failed to discharge. In view of this fact, CIRA order was confirmed and appeal was dismissed. - For tax year 2008 to 2011, it has been observed that AO has just taken figures from the audited accounts and shifted the entire burden on the appellant to show whether the required deductions were made or not. Thus, the AO has crossed the threshold set by the Honorable Supreme Court of Pakistan in a reported judgment over similar issue, therefore, appeals for these tax years are accepted. - For tax year 2012, in respect of monitoring proceedings, AO just quoted a figure for alleged default without mentioning how this figure was worked out. This cannot be approved and, accordingly, alleged default is deleted and case is remanded back so that appellant can be provided an opportunity of being heard. - For tax year 2007, in respect of assessment proceedings, AO observation regarding non-filing of deprecation chart is not understandable as there was no requirement of e-filing of depreciation chart under Rule 34 of the Rules nor could it have been done as no such mechanism was available at FBR's e-portal for tax year 2007. Further, rectification application was rightly placed to consider the impact of assessed unabsorbed depreciation carried forward. Had this impact taken into account no disallowance can be warranted, therefore, assessment order and rejection order of rectification application are deleted accordingly.
2023 127 TAX 12 Appellate Tribunal Inland Revenue, Multan Commissioner Inland Revenue, WHT Zone, Multan vs	128(4), 151, 159, 161 of the Ordinance	The Assessing Officer (the appellant) concluded proceedings of monitoring of withholding taxes against the taxpayer company (the respondent) on the premise that the information submitted is not sufficient and passed the impugned order which was challenged before CIRA. CIRA granted partial relief to the taxpayer whereby the withholding tax demand created on interest payments was deleted. The appellant challenged the actions of CIRA before ATIR on the ground that CIRA was not justified to admit any new evidence at appellate stage which was not earlier furnished by the taxpayer as per section 127(5) of

Bank Al Habib Limited Information requested without pointing out discrepancy is not allowed		the Ordinance. On the other hand, the respondent taxpayer contended that the record furnished to the tax department was examined by the CIRA and no new information was submitted to CIRA. The ATIR dismissed the appeal and decided the case in favor of the taxpayer in the following manner: - The argument of appellant that CIRA was not justified to examine the record not earlier submitted is misconceived as the record in question was already submitted to the appellant; however, the same was not referred by the appellant in his order. Section 128(4) empowers CIRA to call for particulars based on record and documents and CIRA can even make further inquiry(s). - The appellant was ought to point out discrepancies which were never confronted to the respondent. The appellant also failed to mention specific instances of default in his order. Information required in this manner falls under the meaning of fishing and roving inquiry which is not allowed as held by Supreme Court of Pakistan in case law reported as 2021 SCMR 1325.
2023 PTD 499 Inland Revenue Appellate Tribunal, Islamabad Inland Revenue, LTU, Islamabad vs WI-Tribe Pakistan Limited, Islamabad Order passed without taking cognizance of the facts on record is not lawful	128(4), 129(1)(a), 152, 153, 161, 161(1)(b), 162, 205 of the Ordinance	The instant appeal was filed by the ACIR (Appellant) against the order of CIRA who had annulled the order passed by the Appellant on the grounds of failure to specify payments whereon default was committed, creating of tax demand on the accrued expenses instead of the actual payments, and failure to determine applicability of withholding tax provisions. Feeling aggrieved from the impugned order, the appellant challenged the impugned order passed by CIRA before the ATIR on the following grounds: a) The learned CIRA was not justified to annul the order passed under sections 161/205 of the Ordinance on account of non-deduction of tax against payments made to foreign Telecom Operators in respect of Internet charges. b) That the learned CIRA was not justified to delete the demand without taking cognizance of the facts obtaining on record. c) That the observation of the learned CIRA that payments liable to tax deductions were not identified is contrary to the contents of the show-cause notice issued to the taxpayer company. The ATIR observed that the show-cause notice by the ACIR properly confronted the matter and specific payments were called into question. ATIR further observed that the CIRA did not pass the impugned order

		after application of judicial mind as the Order passed by ACIR cannot be declared as null and void merely for the reason of failure to mention the names of the recipients. The ATIR remanded the case back to the ACIR to reexamine the record with respect to nature of payment, quantum of tax deduction and status of the parties to whom the payments were made.
Civil Petitions No.3286 to 3289 of 2017 Supreme Court of Pakistan Snamprogetti Engineering B.V. (the petitioner) vs Commissioner of Inland Revenue Zone-II, L.T.U, Islamabad Provision of service to a local company in Pakistan by employees of non-resident company for the period less than four months does not constitute permanent establishment in Pakistan	Section 122(5A) of the Ordinance, Article 5 of the Double Tax Treaty between Pakistan and the Kingdom of Netherlands.	The petitioner was a company registered in Netherlands, which entered into an engineering and procurement (of spare parts) contract with a local Company in Pakistan. As per the said contract, the petitioner was not responsible for construction and overall management activities of the project. The petitioner filed its returns declaring income pertaining to engineering services as exempt income on the premise that it does not have any permanent establishment in Pakistan and therefore, income arising from engineering services is not subject to tax in Pakistan as envisaged under Double tax treaty between Kingdom of Netherlands and Pakistan (the DTT). The assessing officer (the AO) amended the assessment under section 122(5A) (the order) and imposed tax on income claimed as an exempt income. The order was challenged before CIRA who decided the appeal in favour of the petitioner and set aside the order on the ground that the petitioner does not have any permanent establishment in Pakistan and therefore, income under question was not chargeable to tax in Pakistan under the DTT. The AO challenged the CIRA order before ATIR and the latter accepted the appeal and decided the case in favour of the AO which was also upheld by the High Court; hence, the instant tax reference was filed before Supreme Court of Pakistan and following question was put before the Court by the petitioner: *a) Whether the income derived by the petitioner from providing engineering services to the local company is exempt from income tax in view of the DTT or is it liable to be taxed under normal tax regime of Pakistan?* The Supreme Court of Pakistan decided the case in favour of petitioner. The Supreme Court set-aside the orders passed by the ATIR and the high court and restored the order of CIRA. The apex court held that: a) Although the High Court recognized that the employees/representatives of the petitioner had stayed in Pakistan for 97 days only yet it endorsed the view of the ATIR that the services described in the contract were not dependent on the number of visits by the employees of the petitioner or their physical presence at the site. The high court tried to link the engineering services rendered by the

		petitioner with the period of construction of plant i.e. period exceeding four months in aggregate within a year. The petitioner, therefore, was held to have a permanent establishment within the meaning of Clause 4 of Article 5 of the DTT. On the other hand, the Supreme Court held that the Commissioner (Appeals) had taken a correct approach to calculate the prescribed period of four months necessary for any activity of furnishing services to constitute a permanent establishment as per Clause 4 of Article 5 of the DTT. There may be a number of periods, interspersed with breaks and the aggregate of these periods shall cross the threshold of four months within any twelve-month period to constitute a permanent establishment. b) The income derived by the petitioner from the provision of engineering services to the local company being not attributable to a permanent establishment located in Pakistan is not taxable in Pakistan as long as it is not covered by other Articles of the Convention that would allow such taxation. c) The petitioner is entitled to the exemption provided in the DTT, and the income derived by the petitioner from providing the afore-referred services to the local company is exempt from income tax in Pakistan because of not fulfilling the condition, as discussed in paragraph (a) above, necessary to constitute a permanent establishment as set out in Clause 4 of Article 5 of the Convention

JUNE 2023

CITATION	SECTION(S)	ISSUES INVOLVED
2023 PTD 390 Islamabad High Court Commissioner Inland Revenue, Islamabad vs Messrs International Wireless Communication Pakistan Ltd Only an apparent mistake of fact can be rectified under Section 221	221 of the Ordinance	The respondent taxpayer in the instant case had made payment of royalty and fee for technical services to a Mauritian Company. Commissioner Inland Revenue – Peshawar on December 1, 2014 issued exemption from withholding of tax under section 152(5A) of the Ordinance. On the contrary, Commissioner Inland Revenue, Islamabad issued an order under section 221 of the Ordinance, holding that the payment made by the respondent to the Mauritian Company was liable to tax withholding as the expenses were incurred and paid in Pakistan. Subsequently, Commissioner Appeals passed order annulling the order of CIR, Islamabad on the basis that the order constitutes change of opinion involving interpretation of law instead of rectification of an apparent mistake that is required under section 221. Against the order of Commissioner Appeals, tax department filed appeal before the Appellate Tribunal which upheld the decision of Commissioner Appeals on the same grounds. Thereafter, the department filed appeal before the Islamabad High Court (IHC). IHC decided the matter in favour of the respondent taxpayer on the basis that section 221 does not vest power to CIR to undertake review of its previous order retrospectively and that is too after four years of passing of order and after payment being made to the foreign company. Further, the case is of mere difference in interpretation of law and not rectification of an apparent mistake.
2023 PTD 411 Lahore High Court Allied Bank Limited vs Appellate Tribunal Inland Revenue, Lahore & others Commissioner can delegate his power under Section 210(1) to other taxation officers to amend or further amend the order under Section	122, 122(5A), 122(9), 133, 210(1), 2010(1A) and 211 of the Ordinance	The taxpayer filed a petition in the LHC on the following question of law: Whether Commissioner Inland Revenue can delegate, under Section 210, his powers to amend or further amend, under Section 122(5A) of the Ordinance, when the law envisages consideration by the Commissioner? The taxpayer contended that consideration is required to be made by the Commissioner himself, therefore, powers to amend or further amend under section 122(5A) cannot be delegated by the Commissioner under section 210 of the Ordinance. LHC decided the case against the taxpayer. The decision was made on the basis that: • As per section 210(1), the Commissioner can delegate all his powers and functions to any other taxation officer other than the power of delegation.

122(5A) of the Ordinance.		• By virtue of section 211, the powers exercised by the other taxation officer shall be deemed to be exercised by the Commissioner. The conclusion would be that when Commissioner delegates powers to amend the assessment to the other taxation officer; the said powers include the functions of the Commissioner i.e. scrutiny of the assessment, proper application of mind and then amending the Assessment Order. Reference in this regard was placed on judgments in the case of (2013) 107 TAX 29 and 2013 PTD 1012. • It was further held that powers under Section 122(5A) cannot be divided; Word "power" used in subsection (1) includes functions, as well, as practically it would be difficult that in each case, two orders would be passed; one by the Commissioner of its consideration and then matter would be delegated for passing a final order. If mind has already been applied to determine erroneousness and prejudice to revenue by the Commissioner, then there would be no need to delegate the matter for passing final order.
2023 PTD 649 Sindh High Court Messrs Zam Zam LPG (Private) Limited vs Federation of Pakistan Selection of cases for audit shall reflect proper application of mind, meaningful in nature, clear and definite perspective rather than being generic in nature.	177 of the Ordinance	The petitioner a regular taxpayer, received a notice from the department that its case was selected for audit, without assigning any persuasive reasons. Being aggrieved, the petitioner approached the Sindh High Court [the SHC] through a Writ Petition by taking plea on the premise of well settled proposition of law that while selecting a case for audit, specific reasons for the same have to be given but in the instant matter, no such reasons were given. The Petitioner also contended that the action of the department is also clear violation of section 24A of the General Clauses Act, 1987. The Petitioner referred various decisions of the appellate authorities wherein it has been held that where a superstructure is based on illegality, the same is bound to collapse. The SHC allowed the Petition and vacated the notices issued to the petitioner and held the following: - Reasons for selection of case for audit shall be demonstrated to show that these are proper application of mind, meaningful in nature, clear and definite, rather than being generic in nature. - If there is no independent application of mind in giving reasons to select a taxpayer for an audit under section 177 of the Ordinance, then the purpose of section 177 is not achieved and it could not be said to be an exercise undertaken by the Commissioner under section 177.

		- As per section 24A of the General Clauses Act, where an authority is burdened with the responsibility of exercising discretion, the said action shall be carried out fairly and justly in the manner prescribed under the books whereas any violation of this principle is liable to be struck down.
2023 PTD 689 Sindh High Court Messrs Modern Textile Mills Limited vs Commissioner Inland Revenue Claim of capital gain on sale of land as exempt income during winding up process is not justified, where there is evidence of trade to earn profit or gain	18, 79, 122, 133 and 166 of the Ordinance	The Petitioner (the company), was a limited company engaged in the business of weaving of textiles and due to continuous losses followed the voluntary winding up process before the competent authority. The return of income for the year under consideration was filed by declaring 'Nil' income; however, an amount was claimed as exempt under section 79(1)(e) of the Ordinance on account of sale of land by the company to its shareholders in the event of liquidation. The concerned Additional Commissioner Inland Revenue proceeded to amend the deemed assessment order by requesting details form the company with regard to the claim of exempt income. On submission of requisite details, the amendment proceedings were dropped vide order under section 122(5A) of the Ordinance. Later on, the case of the company was selected for audit and again the company submitted the various details, inter alia, claim of exempt income. While concluding the audit proceedings, the concerned Taxation Officer (TO) contended that income declared by the company does not enjoy exemption and treated the same as income from business and taxed the amount accordingly through the amended assessment order. The TO also treated the distribution of profits from sale of land as dividend under section 2(19)(c) of the Ordinance, subject to withholding tax under section 150 of the Ordinance. Being aggrieved by the decision of the ACIR, the company filed appeal before the Commissioner Appeals, who dismissed the appeal. The company then preferred an appeal before the Appellate Tribunal Inland Revenue (the ATIR) who also dismissed the same. Subsequently, the company filed income tax reference application before the Sindh High Court (the SHC) by raising following questions of law: i. Whether on the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified in holding that there was no claim under Section 79(1)(e) of the Ordinance in the earlier round of proceedings initiated under section122(5A) of the Income Tax Ordinance for the same tax year, therefore, additional assessment made under Section 122(5A) Ordinance was justified under the facts and circumstances.

		ii. Whether on the facts and the circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified in holding that the surplus from the sale of property distributed to the shareholders being payment made to shareholders on liquidation of the company does not fall within the definition of Section 79(1) of the Income Tax Ordinance,2001? iii. Whether on the facts and the circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified in holding that the definition of disposal of assets undersection 75 of the Ordinance does not apply in cases of liquidation under section 79(1)(e) of the Ordinance? iv. Whether on the facts and the circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified in treating the payment made to the shareholders during liquidation as dividend and liable to withholding tax? The SHC dismissed the reference application and held that all the three authorities below i.e. Taxation Officer, Commissioner (Appeals) and the ATIR were justified in reaching to the conclusion that the exemption claimed by the company is not applicable for the case in hand due to the following reasons: - It has been observed that conflicting factual submissions made by the company during audit and assessment proceedings contrary to the third party information available that amounted to conclude that the land was not disposed on “as is where is basis” rather it was sold with an intention to make some profit or gain by having some development work and building of housing society. - The manner and method in which the plot of land was sold [construction of roads, plotting of land into commercial and residential plots and thereafter selling out the same to a housing society] could be termed as an "adventure in the nature of trade" which is taxable in the hands of the company and not exempt as being claimed by the company. The intention of a person in selling out any asset depends upon the conduct of the said person and the circumstances of the case. Now if the facts of the present case are examined it would reveal that the manner and method in which the land was sold out clearly fall under adventure in the nature of trade and thus, in our view, is taxable in the hands of the company and not exempt, as claimed by the company under Section 79(1)(e) of the Ordinance.

		- As regards, confrontation of same issue under assessment proceedings and thereafter under audit proceedings, it cannot be termed as change of opinion nor it could be said that it was past and closed transaction, because issue was not carried out earlier in the manner it was probed later on.
(2023) 127 TAX 596 Islamabad High Court Commissioner Inland Revenue (Appeals-II) vs Messrs Pak Telecommunication Employees Trust Claim of income tax exemption is a perpetual process where the entity changes its name and style under the applicable laws and rules.	Section 2(4), 21(e), 53(1)(a), 57(3)(ii), 120(1), 122 and 159 of the Ordinance	By virtue of provisions of The Pakistan Telecommunication Corporation Act, 1991 (the 1991 Act), the employees of the Pakistan Telegraph and Telephone Department, Government of Pakistan (T&T Department) were transferred to the Pakistan Telecommunication Corporation (PTC) on the same terms and conditions to which they were entitled immediately before such transfer. Moreover, the Trust Deed of the Pakistan Telecommunication Corporation Employees Pension Fund (PTCEPF), a superannuation fund, provided that "all departmental employees transferred to the Corporation as defined in Section 9 of the 1991 Act shall be entitled to benefits as defined under the Federal Government (the FG) Pension Rules as applicable to such employees before the formation of PTC. Subsequently, The Pakistan Telecommunication (Re-organization) Act, 1996 (the 1996 Act) was enacted wherein it was provided, inter alia, that the FG shall establish a company to be known as Pakistan Telecommunication Company, limited by shares (the PTCL) and cause it to be incorporated under the erstwhile Companies Ordinance, 1984 and also employees of PTC shall be transferred to PTCL. Further, through notification, the FG all properties and assets of the PTCEPF shall vest and become the assets, properties, rights and liabilities of the Pakistan Telecommunication Employees Trust (the PTET). Accordingly, the PTET applied for and obtained income tax exemption certificates under the repealed Income Tax Ordinance, 1979 and the Ordinance respectively on year on year basis. Going forward, in 2016, the Commissioner Inland Revenue (the CIR) turned down the exemption application. Being aggrieved the PTET filed appeals before CIRA who dismissed the appeals stating, inter alia, that PTET was not an approved superannuation fund and being a trust, the PTET is first required to obtain the status of non-profit organization and only after such approval it can claim exemption from tax under the Ordinance. The PTET preferred appeal before ATIR who allowed the petition in favor of PTET. However, the department filed writ petition before the Islamabad High Court (the IHC) by raising the question of law that claim of exemption is in continuation of older entity (PTCEPF), whereas the case in hand relates to newly established fund (PTET).

		The IHC answered the question of department in negative i.e. in favor of taxpayer and held that it has been the officers of the Inland Revenue who were granting exemptions under the repealed Ordinance 1979 and under the Ordinance for sixteen consecutive years so apparently there is no change in status of the PTET, being a superannuation fund, in continuation of its previous style and new name as PTCEPF. Further, it was held that it is a matter of fact that officers were supposed to be knowledgeable about the issuance of notifications and enactments of Acts by the FG for the purpose of transfer of assets, liabilities and other ancillary matters of PTCEPF to PTET. Thus the CIR has been directed to issue exemption certificate in favour of the taxpayer which would remain valid till the recognition of the Fund has not been withdrawn in the manner prescribed under the Ordinance.
2023 PTD 435 Supreme Court of Pakistan Commissioner Inland Revenue, Zone-II, Regional Tax Office, (RTO) Lahore vs Mian Liaqat Ali Proprietor, Liaqat Hospital, Lahore Gross sales cannot be treated as income and cannot be subjected to tax under Section 111(1)(d).	39, 111, 111(1)(D), 122, 122(5), 122(8), 122(9) of the Ordinance	The tax department issued notices under section 122(5) read with section 111(1)(d) of the Ordinance to the respondent whereby it was alleged that certain amount of sales were concealed by the respondent which attracted section 111(1)(d) of the Ordinance and no deduction of expense was to be allowed thereagainst. Accordingly, the deemed assessment order was amended by the tax officer which was also confirmed by the CIRA. The ATIR decided the issue in favour of the taxpayer while holding that sales alone cannot be treated as 'income' without considering purchases, such an action was illegal and baseless and did not warrant addition u/s 111(1)(d) of ITO, 2001. The Honorable Lahore High court also upheld the view of the ATIR. Feeling aggrieved the tax department sought leave to appeal from the Honorable Supreme Court of Pakistan (SCP) on following question of law: a) *Whether, in the facts and circumstances of the case, the Commissioner has properly interpreted and applied s. 111(1)(d) of the Ordinance?"* The Honorable SCP decided the case in favour of the respondent held that: a) Section 122(5) of the Ordinance is applicable on the situations where any income chargeable to tax has escaped assessment. Therefore, the "net income" instead of "gross receipts" or "gross income" can only brought to tax under the said provision.

		b) Similarly, if Section 111(1)(d) is to be applied as per the understanding by the tax department i.e. on "gross" amount, i.e., the whole of the production or sales suppressed, could be subjected to tax under the Ordinance. The tax liability determined under the two provisions would be different, and the gap could be quite significant, depending on the facts and circumstances of the case. While there is a five year time limit within which an assessment order can be amended under s. 122(5), there now appears to be no such constraint in respect of s. 111(1)(d). There continues to be a complete lack of guidance or any standard by which the tax officer is to be guided as to which of the two provisions is to be applied, and in what circumstances. In order to further align the two provisions with the principles enunciated in Waris Meah's judgement given by the Supreme Court of Pakistan, we hereby direct the Federal Board of Revenue, to forthwith issue appropriate guidance and provide the necessary yardstick, measure, guidelines and standard to the tax authorities, consistent with this judgment, inter alia as to when and how, and in which circumstances and against what taxpayers, action can be initiated under the first clause of section 122(5) on the one hand, or the two sub-clauses of clause (d) of section 111(1) of the other. In issuing such guidelines, the FBR must take into account, and appropriately incorporate therein, the following points: a) If the tax authorities intend to take action against a person within the time period permissible under s. 122, then such action must ordinarily be taken in terms of subsection (5) (or any other applicable subsection, as the case may be) thereof and in a manner compliant therewith, rather than under s. 111 (1)(d). If at all during the said period the OIR nonetheless intends to proceed under the latter provision then clear reasons must be given why this is being done. b) If the tax authorities intend to take action under s. 111 (1)(d) against a person beyond or after the time period stipulated under s. 122, and the taxpayer shows that the information on which such action is based was, or ought reasonably to be regarded either as being or such as could have been, in the knowledge of the tax authorities within the said time period, then the tax authorities will have to give reasons as to why action was not taken under s. 122. It may be noted, as to point (a) above, and in respect of the reasons to be given, that the onus will lie on the

		tax authorities to justify such action and the threshold will be a high one. Furthermore, the reasons will be subject to judicial scrutiny in terms, inter alia, of the hierarchy of remedies provided by and under the Ordinance. As regards point (b) (the purpose of which is to prevent the tax authorities from, as it were, simply running down the clock), the reasons to be given by the OIR if the taxpayer meets the initial burden cast upon him will be subject to judicial scrutiny in terms as just stated
2023 PTD 569 Islamabad High Court Commissioner Inland Revenue vs Islamabad Electric Supply Company Limited, Islamabad (IESCO) Proceedings under Section 161 are to be conducted within the period prescribed under Section 174 of the Ordinance.	133, 161, 174 of the Ordinance	The instant reference was filed under section 133 of the Ordinance emanates from the judgment of the learned ATIR whereby the appeal of the respondent taxpayer was accepted on the basis that the demand created by the tax department (for the tax year 2007) was barred by time and dismissed the cross appeals filed by the tax department. Following questions of law were put before the High Court (IHC): i) Whether the ATIR was justified to hold the recovery order as time barred whereas the issue of time limitation had already been thrashed out by the Honorable IHC and Honorable SCP while clearly holding that there is no time limitation involved in invoking section 52/86 of the repealed Ordinance, 1979, which is pari materia to section 161 of the Ordinance? ii) Whether the learned ATIR was justified in dismissing the department's appeal on the grounds of time limitation; whereas, no such time frame is envisaged under section 161 of the Ordinance? The Honorable IHC decided the case in favour of the taxpayer and held that: a) The learned Lahore High Court (LHC) in case of Maple Leaf Cement held that from a combined reading of subsections (1) and (3) of section 174 reflects that there is no obligation on the taxpayer to maintain such accounts beyond the prescribed period of five years. Assumption that the legislature intended the taxpayer to maintain record for all times may leave the sub-section (3) of section 174 redundant. Same question came under consideration before the Honorable SCP in case of M/s. Panther sports and it was held by the court that section 174(3) of the Ordinance read with Rule 29(4) of the Rules is clear and leaves no room for any such departmental justification,

		which in any case cannot deprive the taxpayer of the statutory protection under section 174(3) of the Ordinance. b) Article 4(2)(C) of the Constitution provides that, "no person shall be compelled to do something which the law does not require him to do". Article 24 of the Constitution guarantees that no person shall be deprived of property in accordance with law. Further, the Article 10-A of the Constitution promises that civil rights and obligations are to be adjudicated fairly through due process and any such false presumption and consequent action taken against the taxpayer shall be equal to infringement of fundamental rights under the said Article. c) Tax demand generated under Section 161 of the Ordinance on account of failure of the taxpayer to produce record beyond the prescribed period for preservation of such records under Section 174 of the Ordinance, is not backed by any legal authority. d) Therefore, we answer the questions raised for our consideration accordingly

JULY 2023

CITATION	SECTION(S)	ISSUES INVOLVED
127 TAX 103 Appellate Tribunal Inland Revenue M/S. Noa Hemis Pharmaceuticals, Karachi vs the Commissioner Inland Revenue, Karachi Conditions specified under the relevant provisions of law to be strictly adhered for making best judgment assessment or amendment of assessment	23(4), 111, 114, 115, 120, 121, 122, 174, 176, 177, 214C of the Ordinance	The Appellant taxpayer in the instant case is an individual engaged in the business of pharmaceuticals and medicines. Taxpayer's return of income was selected for audit under section 214C of the Ordinance. The assessing officer issued notices for intimation of audit and obtaining information under sections 177 and 176 of the Ordinance. As per the arguments of the assessing officer, the Authorized Representative (AR) of the taxpayer requested adjournment on the due date of compliance and subsequently neither anyone appeared in the office nor any details were submitted. Resultantly, the officer issued show-cause notice under section 122(9) of the Ordinance and passed an adverse order under section 122(1)(d) of the Ordinance as best judgment assessment. Being aggrieved, the taxpayer filed appeal before the Commissioner Appeals which was dismissed on the basis of absence of the taxpayer in the hearings fixed. After the decision of Commissioner Appeals, the taxpayer filed appeal before the Appellate Tribunal Inland Revenue (ATIR) on the following grounds: - No audit report was issued under section 177(6) of the Ordinance before invoking section 122; - Mandatory requirement of providing opportunity to rebut audit observations under section 177 was not fulfilled in the given case, hence the entire proceeding is void-ab-initio; and - Definite information was not available with the assessing officer that is a prerequisite for amendment of assessment under the relevant provisions of the Ordinance. The ATIR remanded back the case to the assessing officer for deciding the case strictly on merit in accordance with the law applicable on the basis of following observations: - For best judgment assessment, notice shall be issued to the taxpayer for initiating the proceedings under section 121 of the Ordinance and any one of the conditions mentioned under sub-section (1) shall meet. Best judgment is not possible to be reached by mere subjective satisfaction but also involves an objective assessment of the facts available. Further, the assessing officer should also give a valid reason for arriving at a particular figure of income On the basis of available

		facts, it is evident that notice under section 121 was not issued nor the impugned exparte order fulfilled the declared requirements of best judgment assessment. - Submissions of the taxpayer including details / documents / reconciliations were disregarded, therefore, the order cannot be assessed as best judgment assessment. - Notice under section 122(9) was issued subsequent to selection and conduct of audit as such the order should have been passed under sub-section (5) of section 122 for amendment of assessment. If the provisions under section 177(10) were invoked then best judgment assessment should have been made under section 121(1)(d) of the Ordinance. - The ATIR held that an assessment made under section 120 of the Ordinance cannot be amended merely by issuing notice under section 122(9) of the Ordinance. A complete procedure needs to be followed that requires the assessing officer to issue an audit report under section 177(6) of the Ordinance even if the taxpayer is non-responsive. After obtaining rebuttal of the audit findings, if the officer is satisfied that assessment needs to be amended, only then he can issue notice under section 122(9) read with section 122(1) of the Ordinance after obtaining jurisdiction over the case and fulfilling conditions of section 122(5) of the Ordinance. If this is an amendment of assessment under section 122(5) then definite information is missing in the instant case.
(2023) 127 TAX 721 Lahore High Court Messrs D.G. Khan Cement Company Limited vs the Federal Board of Revenue Selection of audit should be independent and based on impartiality as per the powers vested under the legal provisions of the law.	177 and 214C of the Ordinance	Number of taxpayers belonging to different sectors of the economy such as Edible Oil Manufacturers, Auto Industry, Aerated Water Manufacturers, Beverages, Traders of Electronics, Cement and Housing Societies were selected for audit by the Commissioners Inland Revenue (CIR) as sector-wise selection on the basis of directions issued by the FBR to the Chief Commissioner and other field formations. Being aggrieved, the taxpayers filed constitutional petitions challenging the audit selection mainly on the following grounds: - FBR cannot interfere in the independent discretionary powers of the CIR to select and conduct audit. - Selection for audit under section 177 of the Ordinance by the CIR and under section 214C of the Ordinance by the FBR are two independent methods of selection for audit. Whereas issuing directives by the FBR to the CIR for audit selection in the instant cases have compromised both these independent processes of selection of audit. The Lahore High Court through this judgment accepted all the petitions, involving similar questions of law, and declared such selection of audit to be without lawful authority and of no legal effect in the following manner

		without preventing CIR concerned from exercising his independent authority under section 177 of the Ordinance to proceed afresh in individual cases strictly in accordance with law: - It is well settled legal position that when a particular authority is vested with the power to discharge statutory duty then it is that authority alone, who has to apply its independent mind and arrive at its own conclusion without being influenced by any other authority. - By issuing directives by the FBR to the CIR along with timelines for various steps commencing from the selection for audit till passing of assessment orders, seemed to be interference with the competence conferred to the CIR under the Ordinance. - The powers and functions of FBR include, inter alia, to adopt modern effective tax administration methods and to direct or advise where necessary, investigation into suspected tax evasion, tax fraud, money laundering and to coordinate with the relevant law enforcing agencies. However, these powers and functions do not authorize FBR to interfere in statutory functions, duties and discretion of the CIR. - Section 206 of the Ordinance that endows FBR with powers to interpret provisions of the Ordinance by issuing circulars for such purpose cannot be employed by the FBR to direct the CIR to exercise his discretionary authority for selection of audit cases. - FBR can also not exercise its authority under sections 213 and 214 of the Ordinance under the garb of providing guidance in such manner that it controls or fetters the discretionary audit selection authority vested in the CIR.
(2023) 127 TAX 680 Islamabad High Court Messrs Emaar DHA Islamabad Limited vs Commissioner Inland Revenue (Legal) Instalment payments from the customers under the agreement for sale of developed property are construed as long-term contract for the purpose of	21C, 36, 100D, 111, 122 and 177 of the Ordinance	The petitioner (the company) was selected for audit under section 177 of the Ordinance and, inter alia, was required to satisfy the tax department as to why proceeds for sale of developed property shall not attract the chargeability of income under the head 'Income from Business' from a long term contract on the basis of the percentage of completion method. Accordingly, the assessment was amended by the tax department by making various additions under sections 21(c), 36 and 111 of the Ordinance. Being aggrieved, the company filed appeal before the Commissioner Appeals, who upheld the subject additions made in the taxable income. The company then preferred an appeal before the Appellate Tribunal Inland Revenue (the ATIR) who also upheld the aforementioned additions. Subsequently, the company filed income tax reference application (the ITRA) before

taxation under the Ordinance		the Islamabad High Court (the IHC) by contending as under: - The company being a developer and not a construction contractor had only long term contract with the contractors to undertake the construction of property within the development project, who eventually were required to treat their revenue under section 36 of the Ordinance. - Land and property, being developed by the company, are treated as stock-in-trade and revenue in relation to which is offered for tax at the time of sale to customers, therefore, all amounts received from the customers till the transfer of title in relation to the land were treated as stock-in-trade and not charged in profit and loss account and, therefore, additions under section 21(c) of the Ordinance are not sustainable. - The additions made under section 111 of the Ordinance and confirmation thereof by the authorities below i.e. Commissioner (Appeals) and the ATIR need to be construed as misreading of the provisions and facts of the case. The IHC answered in negative all the points raised by the company in the ITRA and concurred with the findings of the authorities below i.e. Commissioner (Appeals) and the ATIR in the following manner: - The receipts of the company in lieu of installment payments can neither be regarded as equity nor as debt of the company but these receipts constitute the sale consideration paid by the customers (advances) in lieu of property to be constructed and sold by the company and, accordingly, the company is not allowed to withhold such receipts as its own capital investment till the final transfer of subject property. Further, as per the International Accounting Standard 11, revenue arising from contracts for service such as those of project managers and architects is dealt as construction contract. Thus the company is required to offer such revenue from the customers (as installment payments) for tax to the State in proportion to the amount of work completed as agreement for sale with customer fall under the definition of long-term contract as mentioned under section 36(3) of the Ordinance. - In connection with the above discussion, the company is required to account for the cost allocated to the contract and incurred before the end of the tax year, therefore, section 21(c) of the Ordinance has rightly been invoked. - As regards the additions under section 111 of the Ordinance, it is construed that ATIR is the last fact finding authority and anything not produced satisfactorily

		before the below appellate forums cannot be plead before the Higher Courts.
127 TAX 639 Sindh High Court Sapphire Textile Mills Limited vs Federation of Pakistan and others Amendments made to Section 65B vide Finance Act 2019 infringe vested rights of petitioner on past and closed transactions	65B (1), 65B (2), 65B (3) of the Ordinance	As envisaged under Section 65B of the Ordinance, before amendments introduced vide Finance Act 2019, tax credit at the rate of 10% was available in respect of acquisition and installation of plant and machinery until June 30, 2021. Finance Act 2019 curtailed the said credit period to June 30, 2019 and reduced the rate of tax credit from 10% to 5%. The said amendments were challenged through various constitution petitions before the Honorable Sindh Court (SHC). There were following two categories of petitioners who were affected by the amendments introduced vide Finance Act 2019: I. Those who purchased and installed the plant and machinery by June 30, 2019 but were deprived of half of the tax credit due to reduction in the rate of credit by 5%; II. Those who had purchased the relevant plant and machinery prior to amendment introduced vide Finance Act 2019; however, completed the installation before June 30, 2021 but still could not claim the tax credit due to curtailment of period, allowed for acquisition and installation to avail the credit, till June 30, 2019. The petitioners contended as under: I. Section 65B of the Ordinance, as it stood before the amendments brought through vide Finance Act 2019, extended a benefit in shape of tax credit to qualified persons and resultantly, accrued a vested right of the taxpayers upon past and closed transactions who had made investment in prescribed manner. II. The curtailment of the benefit, provided in shape of tax credit, amounted to impermissible vitiation of vested right on past and closed transactions. The SHC decided the petitions in favour of petitioners and held that: a) The two categories identified were found to have protected vested rights and such rights could not be vitiated in the manner intended by the amendment to section 65B of the Ordinance by the Finance Act 2019. b) Tax credit under section 65B at the rate of 10% shall be available where plant and machinery was purchased before June 30, 2019 and installed before June 30, 2021. c) Tax credit shall be allowed to be claimed in tax year in which the plant and machinery is installed. d) Tax department shall determine whether the pertinent plant and machinery were purchased and installed within the period specified supra.

AUGUST 2023

CITATION	SECTION(S)	ISSUES INVOLVED
(2023) 127 TAX 757 Supreme Court of Pakistan Allied Bank Limited vs the Commissioner of Income Tax, Lahore Under Section 210, Commissioner Inland Revenue (CIR) can delegate his powers to amend or further amend under Section 122(5A) of the Ordinance**.**	2(13), 120, 122, 127 and 210 of the Ordinance	The taxpayer filed its return of income for Tax Year 2013, deemed to be an assessment order under section 120 of the Ordinance. The Additional Commissioner Inland Revenue (ADCIR) amended the assessment order, after issuing show-cause notice under section 122(5A) of the Ordinance. Being aggrieved by the decision of ADCIR, the taxpayer filed appeal before the Commissioner Appeals on legal and factual grounds. The taxpayer argued that since assessment order under section 120 of the Ordinance is passed by the Commissioner Inland Revenue, therefore, it can be amended by CIR and the power to amend cannot be delegated to authority lower than CIR. The Commissioner Appeals decided the matter on legal ground against the taxpayer. The taxpayer then filed appeal before the Appellate Tribunal Inland Revenue (ATIR) which was decided in favour of the department. Later, the taxpayer filed income tax reference before the Lahore High Court, which also decided the matter against the taxpayer. The taxpayer then filed a reference before the Honorable Supreme Court of Pakistan wherein the following question of law was raised: Whether the powers of the Commissioner under Section 122(5A) of the Ordinance can be delegated to the Additional Commissioner Inland Revenue under Section 210 of the Ordinance. The Supreme Court of Pakistan decided the reference application against the taxpayer on the following basis: - Section 122(5A) of the Ordinance requires that an opportunity of being heard shall be provided to the taxpayer after which the CIR may amend the assessment order if it is prejudicial to the interest of revenue. -Section 210(1A) of the Ordinance empowers the Commissioner to delegate all his powers and functions conferred upon the Commissioner except for the power of delegation. - Section 211(1) of the Ordinance then further fortifies that where by virtue of an order under Section 210 of the Ordinance, an officer of the Inland Revenue exercises a power or performs a function of the Commissioner, such power or function shall be treated as having been exercised or performed by the Commissioner.

		- The question of law has also already been dealt by a three Member Bench of Supreme Court of Pakistan in an unreported judgment rendered in the case of Bank of Punjab, wherein the assumption of jurisdiction by the Additional Commissioner under Section 122(5A), through delegation, has been affirmed.
(2023) 127 TAX 763 Lahore High Court Commissioner Inland Revenue, Lahore vs M/S Shezan International Limited No capital gain arises on amalgamation	21(k), 37, 35, 75, 97, 120 and 133 of the Ordinance	The respondent taxpayer in the instant case filed its return of income of Tax Year 2004 which was amended on the grounds of being prejudicial to the interest of revenue. Addition on account of capital gains under Section 37 of the Ordinance was made due to amalgamation transaction of the fully owned subsidiary company with the respondent company. The taxpayer filed appeal before the Commissioner Appeals who confirmed the addition on account of capital gains. Commissioner Appeals while dealing with the issue of capital gains on merger, observed that the value of assets received in lieu of shares is the consideration received against the cancellation of shares, and that the respondent-company became the owner of assets of the subsidiary company after scheme of amalgamation was affected. Feeling aggrieved, the taxpayer filed appeal before the ATIR who deleted the addition confirmed by the Commissioner Appeals. Consequently the department filed petition before the Lahore High Court on the ground that the ATIR was not justified in deleting the addition without having any material before it for the purpose of cross-checking in order to satisfy the parameters provided in Section 97 of the Ordinance. LHC decided the petition in favour of the taxpayer on the following basis: - No financial transaction has taken place between the merging companies. - In the scheme of merger arrangement, there does not take place any sale, disposition, exchange or relinquishment or extinguishment of any right on the part of the amalgamating companies that gives rise to any income or gain resulting in a taxable event. - Where the amalgamating company, which is a hundred percent subsidiary, merges with the holding company (amalgamated company), no question of any profit or gain would arise because the amalgamating company (wholly owned subsidiary), on amalgamation ceases to exist, and its identity merges completely with the amalgamated company - Conditions enumerated under section 97 of the Ordinance were fully fulfilled.

(2023)127 TAX 770 Sindh High Court M/S. United Carpets Ltd and others vs Pakistan and others Deletion of Section 214(D) has not created a vested right to avoid audit under Section 177 of the Ordinance after deletion of the said section	119, 122, 122(a), 137, 177, 214(1)(a), 214(1)(b), 214D, 214D(a), 214D(b), 214E of the Ordinance	Notices under section 177, 122 read with section 214D of the Ordinance were challenged through several constitutional petitions which were decided through the instant combined judgment by the Sindh High Court (the SHC). The petitioners argued that Section 214(D) was inserted through Finance Act, 2015 and was thereafter, deleted through Finance Act 2018. Therefore, no further audit proceedings can continue after omission of section 214(D) of the Ordinance as a vested right has accrued to the petitioners after omission of Section 214(D) and the impugned Notices were issued without lawful authority. On the other hand, the tax department denied the accrual of any vested right to the petitioners and argued that the automatic selection of petitioners' cases for audit was due to failure to file returns of income and payment of due taxes within the stipulated time. The SHC dismissed the petition and decided the case in favour of tax department while holding that the petitioners were not selected after omission or deletion of Section 214(D) as they stood selected automatically. No right or a vested right had accrued in the facts and circumstances of the case. The SHC did not entertain the objections so raised in respect of the impugned notices. Whereas, the respondents were directed to proceed further against the petitioners on the basis of respective notices already issued
2023 PTD 732 Lahore High Court Commissioner Inland Revenue Lahore vs Messrs Marwat Enterprises Pvt. Limited Lahore Reconciliation, under Rule 44(4), cannot be called without first ensuring filing of withholding statements	Sections: 161, 162 of the Ordinance and Rule 44(4) of Income Tax Rules, 2002	The proceedings for monitoring of withholding taxes under section 161 / 205 of the Ordinance were concluded against the taxpayer company by the tax officer. Commissioner Inland Revenue (Appeals) confirmed the order passed by the tax officer. Feeling aggrieved, the company filed appeal before ATIR which was allowed; hence, the instant tax reference was filed before the Lahore High Court (the LHC) by the tax department. The LHC pronounced a combined judgement in 31 income tax references which were identical in nature whereby following questions of law were put before the Court: a) Whether under the facts and circumstances, the ATIR was justified to ignore that Commissioner had not verified payment of tax liability under section 161(1B) of the Ordinance, which is mandatory? b) Whether under the facts and circumstances, the ATIR ensured the guidelines and direction given by the August Supreme Court of Pakistan in Commissioner Inland Revenue zone-I vs MCB Bank Limited (2021 SCMR1325) are complied with?

		c) Whether under the facts and circumstances, the Commissioner could issue notice requiring reconciliation under Rule 44(4) of the Income Tax Rules, 2002 without ensuring biannual or annual statements under the Rules? The LHC decided the matter as under: a) Section 161(1B) casts an obligation upon the tax officer to satisfy itself that the tax due from the person has already been paid. Tax liable to be withheld by a withholding agent, cannot be recovered when the tax due is already paid by the relevant taxpayer, being recipient of payment subject to withholding tax. b) The instant case shall be deemed to be pending before the Commissioner; however, before proceeding further in the case following directions given in judgments reported as 2022 LHC 6508 and 2021 SCMR 1325 were directed to be followed by the Commissioner: (i) There must, at least initially, be some reason or information available with the Commissioner for him to conclude that there was, or could have been, a failure to deduct. (ii) All the tax authorities have to do, for the purpose of section 161, is to identify the payments, whether singly or in lump sum (i.e.) as part of a broader class or category of such payments. (iii) The triggering event for issuance of notice is a failure to either collect tax or deduct it. (iv) The Commissioner has to point out a payment to cast burden wholly or solely on the taxpayer. (v) After issuance of notice, the first thing need to be verified is, whether tax, required to be deducted or collected, of a person has been paid or not. If tax liability for the relevant tax year is found paid/ discharged, the commissioner can proceed only to impose default surcharge and penalty. (vi) Reconciliation, under Rule 44(4), cannot be called without first ensuring filing of statements under this Rule. c) It is duty of the Commissioner, as tax administrator to ensure that biannual or annual withholding statements are filed within the time stipulated by the statute. Commissioner is equipped with the power of imposing penalty, if statutory obligation is not fulfilled by any taxpayer. Had the Commissioner fulfilled the duty of

		ensuring compliance for filing statements, at the earliest, notice under section 161 would never have been issued.
2023 PTD 758 Lahore High Court Commissioner Inland Revenue, RTO, Gujranwala vs Messrs Crystal Distributors Adjudicating powers of the Commissioner Inland Revenue (Appeal) and the Appellate Tribunal Inland Revenue as to remanding back/setting aside the cases	111, 122(1), 128(5), 129, 132 and 133 of the Ordinance	The taxpayer (the respondent) e-filed income tax return (ITR) for the tax year 2016 which was considered as deemed assessment order under the Ordinance. Subsequently, the Assessing Officer (the AO) issued show cause notice confronting certain discrepancies in the subject ITR and considered deemed assessment erroneous insofar as prejudicial to the interest of revenue and amended the assessment through issuance of an amended assessment order. Being aggrieved by order of the AO, the taxpayer filed an appeal before the CIRA who partially confirmed the order and partially remanded back the case to the AO for fresh proceedings. Thereafter, the taxpayer preferred appeal before ATIR which deleted the additions made by the AO and deleted the CIRA order accordingly. However, the department, being not satisfied, filed a reference application before the Court seeking interpretation of the following questions of law revolving around the case in hand: - Whether or not CIRA is allowed to remand back the case to the authority below. - Action taken by the ATIR i.e. annulment of orders passed by the authorities below is clear violation of section 24A of the General Clauses Act, 1987. The Court set aside the orders passed by the CIRA and ATIR and directed the CIRA to decide the matter in light of the observations explained as under: - CIRA can only confirm, modify or annul the assessment order after examining evidences, as considered necessary, rather than remanding the case to a lower forum. These powers of CIRA appear to be in line with the legislative policy to curb prolonged and protracted litigation at the cost and inconvenience of taxpayer. - ATIR should have set aside the remand back order of CIRA and refer the case back to CIRA to decide it on merits or ATIR should have proceeded and decided the case on merits itself.
2023 PTD 789 Appellate Tribunal Inland Revenue Commissioner Inland Revenue, RTO Faisalabad vs Messrs Crescent Textile Mills, Ltd	124 and 221 of the Ordinance	The taxpayer is a limited company deriving income from running a textile mill, besides other sources of income. The self-assessment for the tax year 2008 was amended and concluded through assessment proceedings through an assessment order by the Assessing Officer (AO). Being aggrieved, an appeal was filed before CIRA who provided relief to the taxpayer on certain matters. Subsequently, the AO considered that income after appeal effect has not been worked out correctly and, accordingly, issued show cause notice to the respondent for

The appeal effect order cannot be subjected to issues extraneous or alien to the appellate order		rectification under section 221 of the Ordinance. In response thereto, the submissions of the taxpayer were found untenable and AO proceeded to pass the impugned rectification order. Feeling aggrieved, the taxpayer again filed an appeal before CIRA who annulled the said rectification order and directed the AO to allow carry forward of business losses and to compute WWF if chargeable. However, the department challenged the CIRA's order before ATIR by way of filing an appeal. The ATIR dismissed the appeal filed by the tax department and decided the case in the following manner: - Once the matter has gone under the test of appeal, subsequently, the appeal effect order cannot be subjected to issues extraneous or alien to the appellate order. - CIRA has rightly noted and observed that the AO has proceeded to make amendment in the garb of rectification and contravened his lawful jurisdiction. - In light of verdicts of the apex courts, scope of rectification of mistake is limited to only those mistakes apparent floating on the surface of the order which was not the case in hand because satisfactory evidence as such was not appearing in the record file.

SEPTEMBER 2023

CITATION	SECTION(S)	ISSUES INVOLVED
(2023) 127 TAX 186 Appellate Tribunal Inland Revenue, Islamabad National Highway Authority, Islamabad vs Commissioner Inland Revenue, CTO, Islamabad FBR cannot extend the time limit without authority from the Parliament.	34(5), 122(5A), 122(9), 122, 120 and 214A (1) of the Ordinance	The taxpayer filed its return of income for tax year 2014, deemed to be an assessment order under section 120 of the Ordinance. Additional Commissioner Inland Revenue (ACIR) issued show cause notice under section 122(5A) read with 122(9) of the Ordinance and confronted taxpayer in respect of certain add backs to income No response was submitted by the Taxpayer. The ACIR vide order dated December 31, 2020 finalized the proceedings and added back above expenses to declared loss. Taxpayer, being aggrieved by the decision, filed an appeal before the Commissioner Inland Revenue (Appeals), who decided the matter against the taxpayer vide order dated June 4, 2021. Being aggrieved by the above decision, taxpayer filed an appeal before the Appellate Tribunal on the ground that no proceedings were pending for tax year 2014, before the issuance of show cause dated December 22, 2020 and tax authorities cannot finalize the proceeding after the expire of statutory limit as provided under section 122 of the Ordinance. The DR argued that Order was passed within statutory time limit as he

		referred to the FBR notification that was issued at the time of COVID-19, wherein due to the lockdown situation, FBR extended the statutory time limit from June 30, 2020 to December 31, 2020 by virtue of power conferred under section 214A of the Ordinance. The DR also raised objection that taxpayer cannot take jurisdictional issue before Tribunal first time if same is not already taken before the lower authorities. The Appellate Tribunal decided the case in favour of the taxpayer. The decision was made on following basis: - A plea regarding assumption of jurisdiction can be taken even before the highest court in the country. Reliance placed on the judgement of the Supreme Court in case of ***Shagufta Begum Vs The Income Tax Officer, Circle-XI, Zone-B, Lahore (1989 PTD 544)*** - Notification issued by FBR dated June 30, 2020 cannot coexist with original provision of the Ordinance which were sought to be amended. Extension in time is beyond the power of delegation to the FBR, as the Ordinance does not give power to FBR to extend the statutory time limit provided in section 122 of the Ordinance. FBR cannot change the law without specific authority from Parliament to do so. - Legislature has used the expressions "extension of time limit" and "condonation of time limit" under a different context in the Ordinance. Therefore, it cannot be said or called that these are synonymous expressions. The expression "condonation of time limit" has only been used in section 214A of the Ordinance. The event of condonation of delay incurs after the lapse of the specified period whereas, extension of time is triggered before the expiry of the statutory time. - Competent authority cannot suo moto extend the time limit or condone the delay on the basis of an application by any person.
2023 PTD 889 Appellate Tribunal Inland Revenue Filter Pakistan (Pvt.) Limited, Karachi vs Commissioner Inland Revenue, Zone-I, MTO, Karachi Stay against recovery of tax demand can be	131 of the Ordinance	In the instant case, an appeal of the taxpayer was pending before the ATIR. The taxpayer had already been granted stay against recovery of tax demand for a total of 360 days through various stay orders. After the expiry of the latest stay order, the taxpayer proceeded with another miscellaneous application requesting further stay to avoid an irreparable loss. The Authorized Representative (AR) of the taxpayer contended that provision of section 131 of the Ordinance is directory and not mandatory in nature. On this basis the AR requested further stay until the decision of main appeal. To decide the matter or granting further stay, the ATIR relied on the judgment of Islamabad High Court in which it was held that the ATIR is empowered to grant interim

extended by the Appellate Tribunal Inland Revenue even after lapse of 180 days after the main hearing of the appeal for providing temporary relief to a taxpayer.		relief for a period of 180 days considering the fact that the main appeal filed is decided within this time period. Failure on part of the ATIR to decide the appeal cannot operate to the prejudice to the appellant taxpayer. Further, the ATIR also relied on the interim order of Lahore High Court in the case of Omega Industries in Writ Petition No. 26556 of 2020 in which it was held that no application for interim relief is to be fixed before the Inland Revenue Tribunals without main appeal. Relying on the above two decisions and considering the fact that main appeal had already been heard, the ATIR granted further stay against recovery of tax demand till the disposal of main appeal to avoid causing undue hardship to the taxpayer
2023 PTD 911 Inland Revenue Messrs Peshawar Electric Supply Company Limited vs Commissioner Inland Revenue, RTO, Peshawar Payments made by electric distribution companies against supply of electricity by the National Transmission and Dispatch Company is exempt from deduction of tax at source.	153, 161, 177 and Clause 46AA of PART IV of Second Schedule of the Ordinance	The Peshawar Electric Supply Company Limited (the appellant) was served show cause notices (the SCN) for the tax years 2012 to 2015 wherein it was alleged that no deduction of income tax was made on payment of "Use of System Charges" (the UoSC) to National Transmission and Dispatch Company (NTDC). The appellant filed reply against the subject SCN wherein charges levelled were denied; however, the Assessing Officer (the AO) didn't agree to the submissions and passed the order. Being aggrieved by order of the AO, the taxpayer filed an appeal before the CIRA who remanded back the case for fresh decision on merits. In the second round of litigation, the AO again repeated his earlier decision and once again the appellant preferred the appeal before CIRA. The CIRA partially allowed the appeal and remanded the case to the extent of fresh calculation of the default surcharge whereas the rest of the AO's Order was confirmed. Thereafter, the appellant approached the ATIR and filed appeals for relevant tax years containing below identical grounds: - NTDC and the appellant exclusively deal with the supply of electricity and receiving payments thereof which are exempt from deduction of withholding tax at source under Clause (46AA) of the 2nd Schedule to Part-IV of the Ordinance. Further, as per SRO 586(I)/91 dated June 30, 1991 read with Section 239 of the Ordinance, the appellant is exempt from withholding of tax under Section 153 of the Ordinance. - Direct invoking of Section 161 of the Ordinance, without recourse to audit under section 177 of the Ordinance, constitutes fishing and roving inquiry which is against the law. - Letter issued by the Central Power Purchasing Agency Guarantee Limited (the CPPAG) certified the fact as to nonpayment for UoSC by the appellant so the question of withholding tax shall not arise unless the actual payment is made. There shall be no imposition of default surcharge

		in the absence of mens rea because government entities have no stake or benefit in short payment of taxes. The ATIR allowed the appeals and vacated the related impugned orders of the authorities below, based on following pronouncements: - As per the definition of UoSC mentioned in SRO 1130(I)/2008 dated October 30, 2008 it can be construed that "UoSC" is part and parcel of the process for electricity supply and cannot be separated from supply of electricity. As such, it is exempt from deduction of income tax as per Clause (46AA) of the 2nd Schedule to Part-IV of the Ordinance and SRO 586(I)/91 dated June 30, 1991. Reliance placed on the judgment reported as ITA No, 1687/LB/2019 [M/s Multan Electric Power Company, Multan Vs. The CIR RTO, Multan, ATIR, Lahore Bench. - Direct invoking of Section 161, without recourse to audit under section 177 of the Ordinance ibid is bad in law. - Documentary evidence i.e. Letter issued by the CPPAG, produced by the appellant, authenticating non-payment of UoSC is reliable, unless proved otherwise by the tax department. - The instant payments by the appellant are exempt from deduction of tax and where no income tax can be legally withheld, there is no question of delayed payment or default surcharge relating thereto. It is well settled principle of law that a thing required by law to be done in a certain manner must be done in the same manner as prescribed by law or not at all.
2023 PTD 919 Islamabad High Court Messrs Fairdeal Exchange Company (Private) Limited vs Federation of Pakistan Cases for audit by Commissioner Inland Revenue shall be selected based on valid reasons and for one tax year at a time only.	20, 122(9), 171, 177 and 214C of the Ordinance	The series of notices under section 177, 122 read with section 214D of the Ordinance i.e. Audit Selection Regime, were challenged through several writ petitions which were decided through the instant combined judgment by the Islamabad High Court (the IHC). The petitioners argued that: - The law requires a 'two-step' process for audit whereby an intermediate hearing shall be held by the CIR between the audit proceedings so that proper speaking order justifying the audit could be passed. - CIR's jurisdiction under section 177(1) was either abolished under section 214C by implication or, in the alternative, was subservient to the Board's power for selection of audit under section 214 C of the Ordinance. Section 177(7) of the Ordinance precludes simultaneous audit for multiple years which has duly been endorsed by the FBR's Circular No. C.4(36)ITP/2002 dated October 05, 2009. The IHC specifically mentioned that the above two contentions, namely, i. the two-step process for audit, and

		ii. the subordination of section 177(1) audit selection regime to the section 214C regime, are already settled by a quartet of binding or persuasive precedent, comprising PTCL, Kohinoor, ChenOne and Pak Tobacco cases. The IHC decided the writ petitions as under: - It is impossible to lay down a standard test required under section 177(1) of the Ordinance. However, the reasons for audit selection should reflect an objective application of mind with respect to the data that appear discrepant and require further examination. - Selection for audit under section 177(1) of the Ordinance is not contingent on selection for audit by the Board under section 214C of the Ordinance. - 2009 circular still constitutes instructions of the FBR to its team that puts a bar, inter alia, regarding selection of case for audit for multiple tax years

OCTOBER 2023

CITATION	SECTION(S)	ISSUES INVOLVED
2023 PTD 1550 Supreme Court CIT v Pak Saudi Fertilizer Limited and another Transactions were for sale of goods and not for agency commission	Section 50(4) of the Ordinance	Taxpayers sold goods to their distributors who deducted tax under section 50(4) of the repealed Ordinance which was final tax as per section 80C thereof. Incomes were reported by taxpayers under section 143B statement relating to income taxable under final tax regime instead of normal return of income. Taxation officers treated the transactions as that of agency commission and taxed incomes under normal tax regime. Commissioner Appeals and Tribunals affirmed the actions of taxation officers but the High Courts overturned the decisions and held the income taxable under normal tax regime. The Supreme Court held that the agreements were for outright sale and that there was neither any agency relationship nor there was any mention of commission under the agreements. The Supreme Court further held that even otherwise taxpayers could not be deprived of the benefit of provisions of section 80C whereby tax deducted under section 50(4) for sale of goods was final tax which aspect was never contested by the department.
2023 PTD 1590 Supreme Court CIT v Fauji Foundation Limited Interest income of welfare trust from investment business held business income		The taxpayer has invested surplus funds to earn income for welfare projects and interest income derived from such investment was treated as income from business. The department treated such income as income from other sources. The Tribunal treated such income as business income and the High Court affirmed the decision on the grounds that a similar decision by the Tribunal in past tax years was not challenged by the department. It was observed by the Supreme Court that since this issue has already been decided by the Tribunal after detailed discussion in previous tax years which was not challenged by the department, therefore, as per principles of res judicata and consistency, there is no rationale for rearguing the case again under same facts and circumstances. The Supreme Court observed that the issue as to whether an income is income from business or income from other sources is to be decided on the bases of taxpayer's functions, objects, memorandum of association and disclosure in return of income. The Supreme Court has stated that there is no doubt that the taxpayer is involved

		in investment business and has derived interest income from investing in surplus funds.
2023 PTD 1434 Lahore High Court Abdul Saboor The Directorate of Intelligence and Investigation has power to conduct proceedings under the Anti-Money Laundering Act, 2010.	Sections 192, 192A, 194 and 199 of the Ordinance	The Petitioner was issued notice by the Directorate of Intelligence and Investigation, Inland Revenue (the Directorate) for proceedings under the Anti-Money Laundering Act, 2010 (the Act). The petitioner challenged the notice before High Court on several grounds. The High Court refused the petition and observed that although the Directorate was designated as an investigative agency under the Act later but it has power to investigate money laundering offence committed earlier but not one committed prior to the promulgation of the Act or designation of sections 192, 192A, 194 and 199 of the Ordinance as predicate offences under Schedule-1 to the Act. It was further observed by the High Court that the punishment is prescribed under the Act for money laundering offence and not for predicate offence and, therefore, it was the date of money laundering offence and not the date of predicate offence which is relevant. The High Court further held that a valid show-cause notice must mention information regarding commission of money laundering offence.
2023 PTD 1519 Sindh High Court Muhammad Anwar Section 162 of the repealed Ordinance not a bar when tax authorities act in excess of their jurisdiction or have mala fide	Section 162 of the repealed Income Tax Ordinance, 1979	The plaintiff bought a ship for breaking, however, the ship arrived at the shore damaged and then capsized and plaintiff first refused to buy the ship but then negotiated to buy the ship at reduced price. The plaintiff declared loss due to the damage of the ship which was challenged by income tax authorities and meanwhile income tax officer issued a letter to customs authorities to stop the plaintiff from doing any scrapping work on the ship. The plaintiff repeatedly requested the authorities to let him do his business but his request was denied and the ship later sank and collapsed. The plaintiff filed suit for damages against income tax and customs authorities for losses caused to him by their stopping him from doing business. The income tax authorities objected against the suit and cited section 162 of the repealed Income Tax Ordinance, 1979 whereby no prosecution, suit or other proceeding shall lie against any person for anything in good faith done or intended to be done under this repealed Ordinance. The High Court held that bar contained under section 162 was not attracted and the suit was maintainable as the action of authorities was in excess of jurisdiction and mala fide.

		The High Court ordered the authorities to pay damages to the plaintiff for his losses. The High Court, however, refused to acknowledge the plaintiff's claim for damages for mental torture, as claim was not substantiated with proof by way of medical records.
2023 PTD 1582 Tribunal Muhammad Muti-ur-Rehman Review of an unadjudicated issue is rectification and not a review	Section 221 of the Ordinance	The Tribunal remanded back the issue to taxation officer by affirming the decision of Commissioner Appeals without dilating on various issues raised by taxpayer or giving its own decision thereon and ignoring the decisions of the Tribunal and higher appellate fora referred by taxpayer. The Tribunal accepted that a mistake was made in not dilating on issues and giving its own decision thereon which was mandatory as per the judgement of Lahore High Court. The Tribunal also acknowledged that a mistake was made in ignoring the binding decisions. The Tribunal observed that reviewing unadjudicated issues is a rectification in terms of section 221 of the Ordinance and not a review.
2023 PTD 1628 Tribunal CIR v Adamjee Insurance Company Limited No tax deduction requirement on payment of directorship fee uptil Tax Year 2014		Taxation officer treated payment of directorship fee liable to tax deduction under section 153(1)(b) of the Ordinance. The Tribunal declared the action of taxation officer void on the grounds that the payment was neither salary nor service and there was no tax deduction requirement on payment of directorship fee in Tax Year 2013 until sub-section (3) was inserted in section 149 of the Ordinance which was applicable from Tax Year 2015 and onwards.
128 TAX 291 Supreme Court CIR v MSC Switzerland Geneva & other Review of judgement invalid where conscious and deliberate decision already given		A review petition was filed by the department before the Supreme Court against a judgement earlier passed by the Supreme Court. The petition was dismissed by the Supreme Court on the grounds that review is justified where there is injustice i.e. misconstruction of law, misreading of evidence and non-consideration of plea raised before a court that would amount to an error floating on the surface of the record, however, review petition would not be competent where a conscious and deliberate decision has been given on a point of law or fact.

128 TAX 368 Sindh High Court International Brands Limited & others Exemptions under clauses (103A) and (103C) not applicable in perpetuity, as same are consciously withdrawn by the Parliament.	Section 59B of the Ordinance	Dividend income of a company from another group company was not taxable as per clauses (103A) and (103C) of Part 1 of the Second Schedule. The said exemptions were withdrawn through the Finance Act, 2021. The petitioners have filed petitions before the High Court and argued that relief available under clauses (103A) and (103C) in respect of inter-corporate dividend shall continue to be available forever for persons who have attained vested right by reorganization as holding / subsidiary companies. The High Court held that it is prerogative of the legislature to grant or takeaway fiscal benefit and the aforesaid exemptions cannot exist in perpetuity, as the same are consciously withdrawn by the Parliament.
128 TAX 404 Lahore High Court Muhammad Aslam Section 236C not applicable on inheritance; Three years period for exemption u/s 236C applicable from date of death.	Section 236C of the Ordinance	Petitioner became owner of an agricultural property by way of inheritance and the said property was transferred in his name on January 2, 2019 through mutation and subsequently the property was sold by petitioner within one year of the mutation. The petitioner was given notice for collection of advance tax under section 236C, which was leviable on transferor of immovable property in respect of inherited property. The petitioner challenged the notice before the High Court. The High Court held that section 236C is not applicable on inheritance; that there is no transfer through mutation; that the petitioner, being heir of the deceased became owner of inherited property at the time of death by way of Islamic law; and that the period of three years for availing exemption under section 236C would be applicable from the date of death and not from the date of mutation
128 TAX 221 (Tribunal) Exide Pakistan Limited Two orders cannot be passed u/s 161 for same tax year	Section 161 of the Ordinance	The Tribunal cancelled the second order passed under section 161 on the grounds that another order has already been passed under section 161 for same tax year. Reliance was placed by the Tribunal on the judgement of Lahore High Court reported as **2012 PTD 188.**
128 TAX 229 Tribunal	Section 4B and 111 of the Ordinance	Super Tax under section 4B was levied on the taxpayer by the DCIR. Moreover, taxpayer sold a property and offered capital gain under section 37 of the Ordinance which was treated by DCIR as income from business taxable under

Imperial Developers & Builders (Pvt) Limited Super tax u/s 4B can be levied only by CIR		section 18. Section 111 was also invoked for making an addition to income. The Tribunal cancelled super tax levy on the grounds that it could only be levied by CIR and not by DCIR. The Tribunal held that income was taxable by way of capital gain, as there was no intention to carry on any business i.e. advance booking, ads for sale, etc., which was vital. Invoking of section 111 was held by the Tribunal as illegal on the grounds that an explanation was already given by taxpayer and there was nothing unexplained.

NOVEMBER 2023

CITATION	SECTION(S)	ISSUES INVOLVED
2023 PTD 1779 (Supreme Court) D.G. Central Directorate of Savings v Abid Hussain Interest income on national savings certificate obtained from FATA is liable to tax deduction u/s 151	Section 151 of the Ordinance	Petitioners filed petition before High Court on the grounds they were residents of FATA and, therefore, interest income derived by them on national savings certificate obtained from national saving center based in FATA was not liable to tax deduction under section 151 of the Ordinance. The Single Judge of High Court rejected the petition whilst Division Bench in intra court appeal held such tax deduction as unconstitutional. The Supreme Court overturned the decision of Division Bench and held that interest income was liable to tax deduction under section 151, as national savings center based in FATA was merely facilitating the investment in national savings certificate and the funds generated were not invested by national savings center based in FATA but by the Central Directorate of National Savings and, therefore, interest income on funds invested by the petitioners accrued in Pakistan and not in FATA. It was further observed by the Supreme Court that the petitioners failed to establish that they were residents of FATA and that the investment was made through national saving center based in FATA.
2023 PTD 1704 (Lahore High Court) Samman Ghee Mills (Pvt) Limited	Section 177 of the Ordinance	Taxpayer filed petition against selection and conduct of audit under section 177 of the Ordinance for multiple tax years simultaneously which was dismissed by single judge of the High Court. The taxpayer filed appeal before the High Court against this decision.

Audit u/s 177 can be conducted for multiple tax years simultaneously.		The High Court dismissed the appeal by stating that there is no bar under section 177 against audit for multiple tax years simultaneously.
2023 PTD 1662 (Tribunal) Mian Feroze Salahuddin Best judgement order cannot be passed beyond time limit specified u/s 121	Section 121 of the Ordinance	Taxation officer passed best judgement assessment order beyond time limit specified under section 121 of the Ordinance. The CIRA rejected the time-bar issue raised by the taxpayer without any discussion. The Tribunal set-aside the assessment order on the grounds that the same was illegal being passed beyond time limit specified under section 121 and stated that issue of time bar is not a technical matter which could be ignored. The Tribunal further held that the issue of time bar is already settled by Supreme Court and, therefore, the Tribunal could not adjudicate and decide on the issue.
2023 PTD 1788 (Tribunal) Ms. Tanvir Sharafat Issuance of show-cause notice only on IRIS is against section 218	Section 218 of the Ordinance	Taxation officer passed assessment order in respect of a non-resident person under section 122(5A) of the Ordinance for alleged under declaration of assets in terms of section 111(1), however, failed to issue show-cause notice other than through IRIS. The Tribunal se-aside the assessment order on the grounds that issuance of show-cause notice through IRIS alone did not meet the requirements of law as notice should have also been issued through another mode specified under section 218 of the Ordinance. The Tribunal remanded back the issue to taxation officer to re-adjudicate the issue and verify all facts before passing any assessment order
128 TAX 26 (Baluchistan High Court) CIR v Baluchistan Onyx Development Corporation Limited Assessment proceedings can be initiated under section 122(1) only on the basis of definite information in terms of section 122(5) which must be evident / documented]	Section 122 of the Ordinance	Assessment order was passed under section 122(1) merely on presumptions. The High Court affirmed the cancellation of assessment order by the Tribunal and observed that assessment order could be passed under section 122(1) only on the basis of definite information in terms of section 122(5) which should be evident / documented at the time of initiation of such proceedings.

128 TAX 480 (Sindh High Court) CIT v Karachi Stock Exchange (G) Limited Income from property not exempt under Clause (93) of Second Schedule to repealed Ordinance as taxpayer was not engaged in charitable purpose.		The taxpayer claimed exemption in respect of its income from property under Clause (93) of Second Schedule to the repealed Income Tax Ordinance, 1979 on the grounds that the property was utilized for "charitable purpose" in terms of section 2(14) of the repealed Ordinance being involved in the advancement of object of general public utility and no dividend is distributed to members being a guarantee company. Taxation officer treated the income from property derived by taxpayer as taxable, as the taxpayer was not a religious or charitable organization, which action was affirmed by the CIRA. The Tribunal held that taxpayer's income from property was exempt under Clause (93), as apart from catering its commercial interests, it is engaged in: assisting, regulating and controlling trading in securities; maintaining high standards of commercial honour and integrity; promoting and including honourable practices; discouraging and suppressing malpractices; settling disputes; etc., which fall under the ambit of advancing object of general public utility, as membership of the taxpayer comprises sufficiently defined and identifiable section of community. The High Court overturned the decision of Tribunal and held that the income from property was not exempt under Clause (93), keeping in view the definition of "charitable purpose" under the repealed Ordinance and in the light of its earlier unreported judgement in the appellant's own case. The High Court observed that the taxpayer is primarily a commercial organization looking after its economic interests, which cannot be termed as a charitable activity or an advancement of objects of general public utility.
128 TAX 501 (Sindh High Court) Saleem Butt Review of judgement invalid where conscious and deliberate decision already given.	Section 177 of the Ordinance	The Petitioner filed petition against notice issued by taxation officer under section 177 of the Ordinance for audit of his tax affairs by citing various illegalities in his notice. The High Court dismissed the petition by stating that the petitioner cannot dislodge the notice by mere allegations unless these are proved.
2023 PTD 1342 Lahore High Court Commissioner of Income Tax vs	Section 177 of the Ordinance	The taxpayer in the instant case is a travel agent deriving income from sale of air tickets. The taxpayer filed return of income declaring net loss of Rs. 503,326 which was deemed to be assessed under section 120 of the Ordinance. The assessing officer considered the deemed income as erroneous and prejudicial to the interest of the revenue on

Messrs Pak Land Travels (Pvt.) Ltd., Faisalabad Advance tax collection on commission earned by travel agents was treated under presumptive tax regime for tax year 2005		the basis that commission earned by the travel agent falls within the purview of Presumptive Tax Regime (PTR) under the provisions of section 169(1)(b) read with sub sections (3) and (4) of section 233 of the Ordinance and passed amendment of assessment order under section 122(5A) of the Ordinance. Being aggrieved, the taxpayer filed appeal before the Commissioner Appeals who also decided the case in favor of the assessing officer. Resultantly, taxpayer filed appeal before the Appellate Tribunal Inland Revenue (ATIR) which was decided in favor of the taxpayer. Hence, the tax department preferred to file reference application before the Lahore High Court (LHC) wherein the following questions of law were to be decided: 1. Whether the ATIR was justified to hold that the commission received by the Travel Agents and insurance Agents does not fall in the purview of the Presumptive Tax Regime for the Tax Year 2005? 2. Whether under the facts and in the circumstances of the case, the learned ATIR was justified to vacate the orders of the authorities below by ignoring subsections (3) and (4) of section 233 and subsection (l)(b) of section 169 as it stood amended through Finance Act, 2004 and was applicable to Tax Year 2005? **Decision:** The reference application was decided in favor of the applicant department. It was held that the findings of the ATIR were not in conformity with the provisions of law. Through the Finance Act, 2004, applicable from Tax Year 2005, commission paid to travel agents are subject to advance tax collection under sub-section (3) of section 233 of the Ordinance. Whereas, sub-section (4) of the section 233 renders the tax collection as final tax. It was also held that changes were made in section 115 of the Ordinance that absolves the Travel and Insurance Agents from the responsibility to file return of income since their income is subject to final tax. Circular no. 7 of 2004 further clarifies that such deduction of tax on commission income would be final tax for tax year 2005 and onwards.
2023 PTD 1347 Appellate Tribunal Inland Revenue Commissioner Inland Revenue, RTO,	Section 236G and 236H of the Ordinance	Respondent in the instant case is a sugar manufacturer, liable to collect advance tax on sales made to retailers, distributors, dealers and wholesalers under sections 236G and 236H of the Ordinance. As per the assessing officer, the respondent failed to collect advance tax under the above-mentioned sections on sales made for the tax periods from July 2013 to March 2014 as no

Lahore vs Messrs Haq Bahu Sugar Mills (Pvt.) Ltd., Lahore Commissioner Appeals can examine information provided in remand back proceedings not provided at an earlier stage of proceedings conducted by the assessing officer		corresponding statements of withholding tax were filed in this regard. Consequently, the officer initiated monitoring proceedings under sections 161/205 of the Ordinance and also passed order creating tax demand of Rs. 6,306,897. The taxpayer feeling aggrieved by the decision, filed appeal before the Commissioner Inland Revenue Appeals (CIRA) who confirmed the order passed by the assessing officer. Later, the taxpayer filed appeal before the Appellate Tribunal Inland Revenue (ATIR), which remanded back the case for verification of sales to retailers/un-registered persons and pass a speaking order after providing adequate opportunity of being heard to the parties. The CIRA as directed initiated remand back proceedings. The taxpayer asserted that being a sugar mill, it did not make any sales to retailers rather the entire sales were made to dealers, wholesalers, distributors and Trading Corporation of Pakistan (TCP). The stance of the taxpayer was opposed by the tax department, however, the CIRA after examining the record provided to him observed that none of the sales were made to retailers and the assessing officer on his own bifurcated the sales between retailers and wholesalers just to charge tax in terms of sections 236G and 236H of the Ordinance. Being aggrieved by the decision of CIRA, the tax department filed appeal before the ATIR on the ground that the CIRA cannot entertain the evidence, not provided at the adjudication stage. **Decision:** The case was decided against the tax department and CIRA's order was upheld on the following basis: - Firstly, the matter was remanded back by the ATIR and the CIRA could only verify the contentions of the taxpayer after examining the relevant record, so no illegality has been committed by the CIRA. Reliance in this regard is placed on the decision of the Honorable Lahore High Court in a case PTR No.222/2011 titled as The CIR v. Malik Auto and Agriculture Industries where it was held as under: *"It would be a travesty of the proceedings before the Commissioner to urge that the Commissioner is entirely powerless in allowing documents to be produced if they are necessary for the controversy to be decided. This power is ancillary to the main power to decide an appeal. This argument offends against the rule of administration of justice and due process. Moreover, we have already held that such a course is open to be adopted by the Commissioner (Appeals) and this is not a question which entitles a party to maintain a reference application*

		Hence, the ground raised by the department regarding reliance of evidence by the CIR(A) not provided at the adjudication stage fails." Secondly, the tax department failed to put forth any plausible rebuttal against the order of the CIRA and to place any material on record before the ATIR in both rounds of litigation to justify the bifurcation of sales made to retailers and distributors.
(2023) 128 TAX 193 Supreme Court of Pakistan Commissioner Income Tax vs M/S Inter Quest Informatics Services SCP held that double tax treaties required to be explored specifically in respect of matters duly covered under the treaty	Article 7 of the Double Tax Treaty (DTT)	The taxpayer (the respondent) is a company, incorporated in and having its principal place of business in the Netherlands, with no place of business in Pakistan. The respondent filed its income tax returns in Pakistan and claimed exemption in respect of its receipts in respect of rental from Lease FLIC Software computer program, by contending the same being its business profits, which were exempt under Article 7 of the Agreement for Avoidance of Double Taxation (the DTT) between Pakistan and Netherlands. However, the Assessing Officer (the AO) did not accept the respondent's contention, and was of the opinion that, such income constitutes royalty and is assessable under Article 12-3(a) (b) of the DTT between Pakistan and Netherlands and called upon the respondent to explain why the same may not be taxed as royalty income at 15%. Consequently, assessment orders were passed by the AO. The respondent challenged the assessment orders before the Commissioner Inland Revenue-Appeals (the CIRA) but these appeals were dismissed and assessment orders issued by the AO were maintained. Being aggrieved, the CIRA order was challenged before the Appellate Tribunal Inland Revenue (the ATIR) but with no success. Consequently, the respondent filed the reference application before the High Court and raised the question that whether the said payment receipts were either business profits under Article 7 of the DTT or royalties under Article 12 of the DTT. The High Court decided the questions in favor of the respondent, and held that the amounts received by the respondent did not constitute royalties. The judgments of the High Court were challenged before the Supreme Court of Pakistan by the tax department (the appellant) and leave to petition was granted. **Decision:** The SCP allowed the appeal filed by the appellant (the tax department) and adjudicated the following aspects: - The High Court overlooked the fact that the High Court's jurisdiction under section 136(1) of the ITO 1979 and

		section 133(1) of the ITO 2001 was limited to considering and deciding questions of law, however, the instant cases were filed to overturn the factual determination made by three qualified forums which had determined that the receipts were royalties in terms of Article 12 of the Convention. - Convention Agreement for avoidance of Double Taxation is a complete document, each term whereof has to be considered in length with considering precedents and textbook explanations of general terms which are not so used in the Convention. - The High Court without setting out the nature of the receipts, let alone doing so in detail, assumed that they did not constitute royalties in terms of Article 12 of the Convention, and did so without analogizing the receipts against the definition of royalties in paragraph 3(a) and (b) of Article 12 of the Convention. - The High Court also (apparently) failed to appreciate that if the respondent was taxed in Pakistan under paragraph 2 of Article 12 of the Convention its tax liability to such extent would have been accordingly adjusted in the Netherlands, and the respondent would not have been double taxed. - The High Court appears not to have considered that the receipts that were taxed were the respondent's earnings in Pakistan, and to have kept this under consideration when considering the applicability of Article 12 of the Convention.

DECEMBER 2023

CITATION	SECTION(S)	ISSUES INVOLVED
2023 PTD 1843 Supreme Court CIR v Ajmal Ali Shiraz Jurisdiction order must be gazetted or disclosed on FBR's website as taxpayers		The department filed review petition before Supreme Court against its earlier judgement wherein assessment order passed under section 122 of the Ordinance was held void on the grounds that Deputy Commissioner Inland Revenue (DCIR) did not have jurisdiction. The petitioner produced jurisdiction order whereby in its view DCIR has jurisdiction to pass the assessment order. Supreme Court dismissed the review petition on the grounds that department's representative was specifically asked during the appeal about the DCIR's jurisdiction to

have right to know who is exercising the authority and whether it is permissible.		pass such assessment order and no reference was made by him of the jurisdiction order produced now in review petition and that the jurisdiction order was neither gazetted not disclosed on the FBR's website whilst taxpayer has right to know who is exercising authority and whether such authority is permissible. It was further observed by the Supreme Court that the jurisdiction order neither delegated the authority to DCIR nor authorized the Commissioner Inland Revenue to do so.
2023 PTD 1829 Sindh High Court Searle Company Limited and others Section 5A of the Ordinance is ultra vires of the Constitution; Interim order of Supreme Court is not a binding precedent under Article 189 of the Constitution as it does not contain any enunciation of law		Various plaintiffs filed suits before High Court inter alia for declaring section 5A of the Ordinance as unconstitutional and for seeking consequential relief. The High Court restrained the department from taking any action under section 5A of the Ordinance against the plaintiffs as section 5A has already been held unconstitutional in the case of Sapphire Textile Mills Limited reported as 2021 PTD 971. The High Court observed that the interim order passed by the Supreme Court granting leave to file an appeal against the judgment in the case of Sapphire does not have any binding precedence under Article 189 of the Constitution as there was no enunciation of law under the said interim order and that the judgment of High Court in the case of Sapphire remains in the field and is, therefore, binding on the High Court
2023 PTD 1831 Lahore High Court CIR v Abdul Qadeer Appellate order passed by Chairman, Tribunal alone was coram-non-judice and against the provisions of section 130(2) of the Ordinance.		Reference was filed before the High Court challenging that the appellate order passed by the Chairman, Tribunal alone was coram-non-judice and against the provisions of section 130(2) of the Ordinance whereby the Tribunal consists of the Chairman and such other judicial and accountant members and in such numbers as the Prime Minister may prescribe by rules. The High Court set-aside the appellate order passed by Tribunal declaring it coram-non-judice and against the provisions of section 130(2) and directed the Tribunal to hear the appeal and pass the appellate order afresh. Reliance was placed by the High Court on its earlier judgement reported as 2010 PTD 1024 wherein decision of Tribunal, passed by single judge was held coram-non-judice and it was observed that a single member of Tribunal can pass an appellate order only when that member was part of the two member bench to whom the case was originally assigned but for some reason the appellate order could not be passed by two members

2023 PTD 1833 Islamabad High Court CCIT v Federation of Pakistan Section 140 notice issued for recovery of CVT demand arising out of orders could not be challenged in High Court as the orders already challenged before CIR		Petitioner challenged notice issued under section 140 of the Ordinance for recovery of CVT payable by the petitioner arising out of an order passed under section 7 of the Finance Act, 1989. The petitioner argued that CVT recovery was challenged by other persons in Supreme Court which granted the stay against the recovery and it was only recently that the issue of CVT was finally decided against these persons and afterwards the recovery was revived and pursued by the department against the petitioner. The High Court dismissed the petition on the grounds that the orders creating demand of CVT were challenged by the petitioner before the Commissioner Inland Revenue under section 122A of the Ordinance and the petitioner has already availed alternate efficacious remedy before another forum, therefore, there is no need to comment on the merits of the case. The High Court has further observed that the issue of payment of CVT is already decided by the High Courts and Supreme Court in other cases against those persons.
128 TAX 288 Islamabad High Court Mian Amjad Saeed Islamabad High Court lacks jurisdiction in the tax matters of petitioner, as assessment order was passed by Karachi office and his registered address is also of Karachi		The petitioner filed petition before Islamabad High Court against notice issued by Karachi tax office for recovering tax demand arising out of assessment order passed ex parte by Karachi office on the grounds that the petitioner moved after retirement from Karachi to Islamabad and, therefore, Karachi office has no jurisdiction on tax matters. The petition was dismissed as being not maintainable, as Islamabad High Court has no jurisdiction in the tax matters of the petitioner, as assessment proceedings were conducted, assessment order was passed and recovery notice was issued by Karachi tax office and the appeal against the assessment order also lie with Karachi appellate forum. The High Court observed that the petitioner's registered office is also of Karachi and to date the petitioner has not made any attempt to change it. The High Court further observed that the petitioner may request for the transfer of his jurisdiction from Karachi office to Islamabad office for future purpose.
128 TAX 531 Sindh High Court SKF Pakistan (Pvt) Limited & Mohsin Ali Nathani		Various taxpayers filed petitions before High Court for quashment of condonation letter issued by FBR extending time limit for audit / assessment proceedings for Tax Year 2014 for further six months uptil June 30, 2020 whilst the FBR has earlier already extended time limit expired on June 30, 2019 for six months uptil December 31, 2019. The High Court held that the second condonation granted by the FBR for further six months through merely a letter for the same reason i.e. COVID 19 for which six months

Second condonation granted by FBR for COVID 19 held unreasonable and against provisions of sections 214A of the Ordinance as six months extension already granted; Time limit u/s 174 for taxpayers having calendar year as their accounting year expired on December 31, 2019 and not June 30, 2020		extension was earlier granted and proceedings were still not finalized is not reasonable and against the provisions of sections 214A and 214C of the Ordinance. The High Court further held that the department does not have power to conduct proceedings when it has already become time-barred and past and closed transaction. The High Court also observed that the time limit for keeping books and records under section 174 of the Ordinance for Tax Year 2014 in respect of taxpayers having accounting year ending on December 31 each year has expired on December 31,2019.
128 TAX 358 Tribunal Progressive Engineering Sponsor Establishing erroneousness is mandatory for section 66A/122(5A) proceedings; TO must follow same treatment as decided by Tribunal in earlier years		Taxation officer inter alia disallowed commission expense under section 24(ff) of the repealed Ordinance [pari materia to section 21(l) of the Ordinance] arbitrarily without material or evidence thru assessment order under section 66A of repealed Ordinance. The Tribunal held that the powers under section 66A of repealed Ordinance [pari materia to section 122(5A) of the Ordinance] is supervisory and erroneousness must be stablished before initiating assessment proceedings under the aforesaid section. It was further held that once an issue is decided by the Tribunal in a year then the same treatment shall be followed by taxation officer in subsequent year. This is also the requirement of the provisions of section 124A of the Ordinance

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