IN THE NAME OF ALLAH ALMIGHTY, THE MOST MERCIFUL, MOST BENEFICENT



NEWSLETTER AUGUST 2019



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DISCLAIMER

Khilji & Co (Chartered Accountants) is pleased to present Firm's Newsletter. The only purpose of this document is to provide updated information to our clients about recent circulars/ notifications issued by various authorities during this month and also to provide our clients with information on latest useful decisions of appellate courts. The information provided in this document should only be used in conjunction with professional opinion from tax/ legal advisor and checked for updated position of law. This document as a whole or its any part should not be reproduced in any form without prior written approval from Khilji & Co. This newsletter is distributed free of cost to our clients only. We humbly request our readers to please provide us the most valuable comments to make this more informative and useful. It has always been a pleasure to be of service to our clients.

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- 1. Mr. Muhammad Waheed Iqbal, FCA
- 2. Mr. Agha Mudassar Khan
- 3. Syed Asim Habib

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BIG NEWS OF THE MONTH

Khilji and Co has continued its journey towards new endevours and horizons. During the month of August 2019 (August 22, 2019), Khilji and Co organized an economically budgeted WORKSHOP on FINANCE ACT CHANGES 2019 --- Income Tax and Sales Tax. This event was organized at Islamabad Hotel, Islamabad.

Following highly knowledgeable and experts of Taxation shared their proficiency through Lectures/presentations and Panel Discussion.:

Chief Guest Mr. Nazir Ahmed (Former Chairman, Appellate Tribunal Inland Revenue)

Trainers Mr. Sharif ud din Khilji, (FCA) (Income Tax), Mr. Waheed Iqbal, (FCA) (Federal Sales tax) and

Mr. Rahat Gul, (FCA) (Provincial sales tax)

Panelists Mr. Saeed Chughtai (FCA, Moderator), Mr. Naeem ul Haq Advocate (Rawalpindi Islamabad Tax

Bar Association), Mr. Sharif ud din Khilji (FCA), Mr. Waheed Iqbal (FCA), Mr. Rahat Gul

(FCA).

Khilji and Co wish to express its sincerest thanks to the guests who came and graced this event with their presence and most importantly through their proactive participation. Through this newsletter, Khilji and Co is especially thankful for those guests who came all the way from Sialkot, Faisalabad, Lahore and Lalamusa.

The success of this event will Insha Allah go a long way for us to arrange similar type of events in future as well.

The entire Material of Workshop can be accessed from following Link

https://khilji.net.pk/wp-content/uploads/2019/08/Workshop-Material-22-Aug-2019.pdf

The Entire Video of the Event can be accessed from following Link

https://studio.youtube.com/channel/UCA4UjhDS AMKNOFVu7 Qjyg/videos

Some clicks of this events can be seen at the end of this Newsletter.



SUPREME COURT OF PAKISTAN - CIVIL APPEAL NO. 545-K OF 2010

Parties: COMMISSIONER OF INCOME TAX, PESHAWAR (Petitioner)

VS

DIRECTOR GENERAL, NWFP EMPLOYEES SOCIAL SECURITY INSTITUTION, PESHAWAR AND ANOTHER (Respondent)

Date of Order: 09-01-2019

Brief Facts:

This appeal, filed by the Department, impugns the judgment of the learned High Court whereby a tax reference filed by the respondent was allowed.

Brief facts of the case are that (KPK) Provincial Employees' Social Security (Respondent) was setup under (KPK) Provincial Employees' Social Security Ordinance, 1965 ("1965 Ordinance") to provide various benefits to certain categories of employees in the event of sickness, maternity, employment injury or death. The principal source of funds of the Respondent is the contributions that employers are required to make in respect of their employees. The Department sought to levy tax on the respondent, on the basis that it had income within the meaning of the Income Tax Ordinance, 1979 ("1979 Ordinance") and did not enjoy any exemption there under. The respondent resisted this claim on two grounds. Firstly, it was contended that the receipts (and especially the contributions under section 20) did not constitute "income" within the meaning of the 1979 Ordinance. Thus, no question arose of there being any income that could be brought to tax. Secondly, and in the alternative, it was contended that even if the said receipts amounted to "income" the respondent was entitled to the exemption contained in clause (62) of Part I of the Second Schedule to the 1979 Ordinance ("Clause 62"). Both grounds were rejected by the tax authorities and the respondent's appeal before the learned Appellate Tribunal also failed. This resulted in the filing of a tax reference before the learned High Court, where the respondent met with success. Leave was granted here to the Department vide order dated 12.07.2010, inter alia, to consider whether the amounts, and in particular the contributions, received by the respondent were "income" within the meaning of section 2(24) of the 1979 Ordinance.

The learned Court observed following:

- 1. Definition of income u/s 2(24) of the ITO, 1979 is inclusive and not exhaustive and rejected ground of respondent that contributions are not income.
- 2. Application of section 62 of 1965 Ordinance precluded as the contributions made were statutory and mandatory and not "voluntary".
- 3. Clause 142 of ITO, 2001 cannot be given retrospective effect as relates to subsequent legislation interfering to a vested right.
- 4. The leave has been granted to limitation for one day delay in filing of appeal.

Decision:

The honorable Court after discussing the legal provisions allowed the appeal and set aside the impugned order in following words:

"For reasons to be recorded later, this appeal is allowed. It is noted that the tax assessed upon the income of the respondent-Employees Social Security Institution ("ESSI") does not include any surcharge of penalties. The disputed demand for tax by the appellant on the contributions collected by respondent-ESSI is for period, namely, 1999-2002 and 2002-2003. Subsequently, these contributions have been exempted as of financial year 2015. Whilst we hold that the contributions received by the respondent-ESSI are taxable as its income, we allow the respondent, which is a welfare organization, to approach the Federal Government forthwith for appropriate relief, if any, that may be granted in respect of the tax due.

2. Be that as it may, the demand for tax raised by the appellant for the afore-noted assessment years is upheld in the terms noted above. The recovery of such dues, when resorted by the appellant, shall be effected through installments that can be easily met by the respondents."

SUPREME COURT OF PAKISTAN - CIVIL APPEAL NO. 308 TO 326 OF 2008

Parties: OXFORD UNIVERSITY PRESS

VS

COMMISSIONER OF INCOME TAX, COMPANIES ZONE-I, KARACHI

Date of Order: 17-10-2018

Brief Facts:

The brief facts are that these appeals and leave petitions arise under the Income Tax Ordinance, 1979 ("1979 Ordinance") and relate to Oxford University Press in relation to income arising out of its Pakistan operations. The assessee claimed exemption from tax under clause (86) of Part I of the Second Schedule ("Clause 86"), which provided as follows:

"Any income of any university or other educational institution established solely for educational purposes and not for purposes of profit."

It may be noted that the Income Tax Ordinance, 2001 had provided an identical exemption, in clause (92) of Part I of its Second Schedule. However, this clause was omitted in 2013.

Before the Appellate Tribunal the assessee's claim failed in respect of some of the assessment years, but succeeded in respect of others (no doubt on account of the appeals being heard by differently constituted benches). Both the assessee and the Department filed tax references in the High Court. They were taken up and disposed off together by means of the impugned judgment, which is reported as Oxford University Press v Commissioner of Income Tax 2007 PTD 1533. The High Court held that there was no entitlement to the benefit of Clause 86 against which the assessee petitioned to Supreme Court, and leave to appeal was granted by order dated 06.03.2008.

The honorable Supreme Court after discussing the legal provisions, scope of Clause 86, interpretation and restriction made by High Court (by relying on decision of Indian Supreme Court) and discussing the said decision of Indian Supreme Court in details did not found the order of the learned High Court to be sustained and allowed the appeal for the entitlement of exemption in terms of Clause 86: The Supreme Court observed the following:

- 1. The restriction added by the learned High Court by relying on decision made by Indian Supreme Court that for qualifying exemption in terms of clause 86 of Part I of the Second Schedule of the Income Tax Ordinance (ITO), 1979 for a University or education to be provided in Pakistan was unlawful, beyond the scope of clause 86 and wrongly interpreted. Thus the appellant was entitled to exemption in terms of Clause 86.
- **2.** The honorable Court also rejected the point of few amounts on account of profit remitted to the University on the basis that the same may not be constituted as "disbursement of profits".

Decision:

"14. that the word "existing" as used in the Indian clause had no locational significance. We likewise conclude that the word "established" had no such import in Clause 86.

LAHORE HIGH COURT - ITR NO. 136801 OF 2018

Parties: COMMISSIONER INLAND REVENUE, RTO FAISALABAD

VS

FAQIR HUSSAIN & ANOTHER **Date of Hearing:** 18-04-2019

Brief Facts:

Brief facts of instant Reference Application are that respondent taxpayer filed income tax return for the year 2009 declaring his assets in the Wealth Statement amounting to Rs.3,120,000/-. Later on, it transpired to assessing officer that the assets have been acquired by the taxpayer through sources of income concealed from the applicant department, thus, notice under Section 122(9) was served upon respondent taxpayer, which culminated in passing order-in-original dated 18.05.2016 making addition in income of taxpayer of Rs.3,120,000/- on account of Assets and raised tax demand of Rs.780,000/-. Feeling aggrieved, respondent-taxpayer assailed said order in appeal before Commissioner Inland Revenue (Appeals), whereby addition was reduced to Rs.1,920,000/-, vide order dated 10.01.2017. Feeling dissatisfied, respondent-taxpayer filed second appeal before the Appellate Tribunal, whereby orders passed by fora below were set-aside and appeal was accepted vide order dated 06.09.2017. Therefore, reference application was made to High Court by the department.

Question Proposed for Court's Opinion:

"Whether there is a need to issue a separate notice for addition u/s 111 when the law only requires that if the explanation offered by a taxpayer is not satisfactory or no explanation is offered by the taxpayer, the unexplained income shall be included in the person's income chargeable under the head "income from other sources" after confronting the taxpayer u/s 122(9) of the Income Tax Ordinance, 2001?"

Decision:

The honorable Lahore High Court after discussing the legal provisions and observation from two case laws of High Courts of Sindh & Lahore maintained that issuance of separate notice to confront taxpayer on issues in following words:

"11. So far as argument of learned Legal Advisors of applicant-department, with reference to the cases of Abdul Ghani and Zamindara Paper and Board Mills supra, that mere substance of notice is to be seen and mentioning of Section 111 with its all ingredients along with notice under Section 122(9) read with Section 122(5A) fulfills the conditions, suffice it to say that law mandates the issuance of separate notice / explanation within the contemplation of Section 111, therefore, same cannot be made redundant.

12. In view of the above, our answer to the proposed question is in affirmative i.e. against the applicant-department and in favour of respondent-taxpayers.

This Reference Application, along with connected Reference Applications, is decided against applicant-department."

SINDH HIGH COURT - SUIT NO. 2013 OF 2015 & OTHERS

Parties: KPMG TASEER HADI & Co. & Others

A.F. FERGUSON & Co. & Others EY FORD RHODES & Others

VS

FEDERATION OF PAKISTAN AND OTHERS

Date of Judgment: 09-08-2019

Brief Facts:

Brief facts are that all these connected Suits involve a common legal question and have therefore been heard together and are being decided through this common Judgment. Plaintiff No.1 in all these Suits are an Association of Persons / Firms registered under the Partnership Act, 1932, whereas, the remaining Plaintiffs are the partners of the said Firms. Similarly, Plaintiff No.1 in all these Suits are also registered as a Firm of Chartered Accountants under the Institute of Chartered Accountants of Pakistan Ordinance, 1961, ("1961 Ordinance"), whereas, the remaining Plaintiffs are also qualified Chartered Accountants and members of the Institute of Chartered Accountants of Pakistan under the 1961 Ordinance.

The case of the Plaintiffs is that though in terms of Section 92 of the Income Tax Ordinance, 2001, it is the firm which has to file its return and pay the tax; however, at the same time there is no limitation or prohibition, if the partners after receiving the income from the firm, file their respective returns and pay the tax on such income received from the firm. According to them in each situation the income has to be taxed once; either on the income of the firm or on the income of the partners. The precise case of the Plaintiffs is to the effect that it is their choice to pay tax either by the Firm or by the Partners and once it is paid by the partners; the Firm is not liable to pay any tax.

The first set of Suits was filed in the year 2014, wherein, certain ad-interim orders were passed, and subsequently for each year thereafter, fresh Suit(s) were filed for seeking similar orders in respect of each subsequent tax year.

Question Proposed for Court's Opinion:

Following legal Issues were settled for adjudication:

- i. Whether the Suit is maintainable?
- ii. Whether Section 92 of the Income Tax Ordinance, 2001, providing for separate taxation of Association of Persons is inapplicable to firms/registered partnerships including the Plaintiff No.1?
- iii. Whether the erstwhile Sub Section (2) of Section 92 of the Income Tax Ordinance, 2001, being in the nature of mere clarificatory provision, its omission vide Finance Act, 2007, was immaterial insofar as professional firms prohibited from incorporating under the law were concerned and such firms including the Plaintiff No.1 continued to be excluded from the purview of Sub Section (1) of Section 92 of the Income Tax Ordinance, 2001?
- iv. Whether a registered firm such as the Plaintiff No.1 could lawfully be included in the definition of or otherwise treated as "Association of Persons" for the purpose of levy and recovery of income tax under of the Income Tax Ordinance, 2001?
- v. Whether the Plaintiff No.1 is a person within the ambit of Income Tax Ordinance, 2001 in terms of Section 80(2)(a) & (c)?
- vi. Whether inclusion of "profession or vocation" in the definition of "business" under Section 2(10) of the Income Tax Ordinance, 2001 is lawful and constitutional and could lawfully result in levy of tax on profession or vocation under provisions where tax is leviable only on "business" under the relevant provisions of the Income Tax Ordinance, 2001?
- vii. Whether the Plaintiff No.1 is liable to pay income tax under the provisions of the Income Tax Ordinance, 2001, when all its partners/Plaintiffs No.2 onwards are individually paying income tax respectively under the provisions of the Income Tax Ordinance, 2001?
- viii. What should the decree be?

Decision:

The Court observed that that in terms of Section 92 of the Income Tax Ordinance, 2001 it is only the association of persons or the firm which has to file its return of total income and pay the tax accordingly, and not the partners individually in respect of the income received from the association of persons or the firm. Once the tax is paid by the firm, then the partners are not required to pay any tax on such part of the income on which tax has already been paid; however, they are required to file independent return and pay tax on the other income, if any. There is no other interpretation and or understanding of Section 92 which can be arrived at or inferred by this Court.

The honorable Court decided above questions in following manner:

Issue No.(ii)	negative	
Issue No. (iii)	negative	
Issue No.(iv)	affirmative	
Issue No.(v)	affirmative	
Issue No. (vi)	affirmative	
Issue No. (vii)	affirmative	
Issue No. (viii)	Suit(s) dismissed."	

The Court further recorded:

"21. Now this Court has come to the conclusion that Plaintiff No.1 in all these Suits i.e. the firm was required to file its return and pay the tax accordingly; whereas, Plaintiff No.1 in these Suits have not deposited any such amount, and therefore, on this count also, these Suits and any further proceedings as well, are not maintainable in view of the aforesaid judgment of the Hon" ble Supreme Court. The issue is therefore, answered accordingly" (emphasis is ours)

ISLAMABAD HIGH COURT - W.P. NO. 3195 OF 2018

Parties: SHALIMAR RECORDING AND BROADCASTIN COMPANY

VS

COMMISSIONER INLAND REVENUE (APPEALS)

Date of Hearing: 08-03-2019

Brief Facts:

Brief facts relevant for the adjudication of these petitions are that the petitioners are taxpayers and they were proceeded against under the Income Tax Ordinance, 2001 [hereinafter referred to as the "Ordinance of 2001"], the Sales Tax Act 1990 [hereinafter referred to as the "Act of 1990"] or the Federal Excise Act 2005 [hereinafter referred to as the "Act of 2005"]. The petitioners had exercised their statutory right of appeal provided under section 131 of the Ordinance of 2001. The Appellate Tribunal Inland Revenue in exercise of powers conferred under sub section (5) of section 131, had stayed the recovery of the adjudicated tax. The appeals could not be decided or disposed of within the time specified under sub section (2A) of section 132 of the Ordinance of 2001 i.e. within six months of filing of the appeal.

The learned Tribunal, having regard to the second proviso of sub section (5) of section 131 of the Ordinance of 2001, declared that it was not empowered to extend the time beyond one hundred and eighty days from the date when the order for staying the recovery of tax was passed. The appeals preferred by the petitioners are pending before the learned Tribunal. The petitioners have invoked the jurisdiction of the High Court under Article 199 of the Constitution being aggrieved on account of refusal on the part of the learned Tribunal to extend the injunctive orders passed pursuant to powers exercised under sub section (5) of section 131 of the Ordinance of 2001.

Decision:

The honorable High Court after discussing the legal provisions and observation from Super Asia case law decided by the honorable Supreme Court concluded that the provision for providing stay for 180 days is not a mandatory yet a directory one. Therefore, the stay may be granted to the appellant if the delay in deciding the appeal is not on part of the appellant yet on part of Department or Tribunal. Thus allowing stay for more than 180 days conditionally in following words:

"10. By now it is an embedded principle of fiscal statutes that if a person sought to be taxed comes within the letter of the law then the latter must be taxed no matter how great the hardship appears to be. Conversely, if the State is seeking to recover the tax then it has to bring the subject within the letter of the law otherwise no fiscal burden can be imposed. It is also a settled principle of interpretation of a taxation statute that interpretation cannot be based on presumptions and that the Court has to look at the words of the statute and accordingly interpret them. The interpretation ought to be in the light of what has been expressed. To recover a tax, it is the duty of the State to establish that the subject falls within the letter of law. The Tribunal is the last forum in this regard. Keeping in view the scheme of the Ordinance of 2001 and the abovementioned principles enunciated by the august Supreme Court in relation to the distinction between 'mandatory' and 'directory' provisions, this Court has no hesitation in declaring that the time prescribed under section 132(2A) and the second proviso to section 131(5) are directory and not mandatory. However, it is noted that if the delay in deciding the appeal beyond the time prescribed under section 132(2A) is attributed to the person who has preferred the appeal and not the Department or the Tribunal then the latter would be at liberty to vacate an order staying the recovery after affording an opportunity of hearing. The judgment of the august Supreme Court in the case of M/S Super Asia supra is distinguishable because in that case the Department had not passed an order within the prescribed time despite being vested with power to grant extension. The said enunciation of law was regarding delay in adjudicating a show cause notice and not disposal of an appeal by an appellant forum." (Emphasis supplied is ours)

NOTIFICATIONS / CIRCULARS

FBR NOTIFICATION

Introduction

Federal Board of Revenue issued SRO ref: 904(I)/2019 (Custom / Sales Tax) dated August 2, 2019

Commentary

Through this notification FBR has made amendments in Notification No. S.R.O. 678(I)/2004 dated August 07, 2004 under Sales Tax Act, 1990 and Custom Act, 1969. The amendments are made under the exercise of powers conferred by section 19 of Custom Act, 1969 (IV of 1969) read with clause (a) of sub-section (2) of section 3 of the Sales Tax Act, 1990.

The Revenue Division presents the addition of expression in the above mentioned notification through which federal government provided exemption on certain imported plants, machinery, vehicles and other equipment's imported by petroleum sector companies, corporations and organizations including their contractors and sub-contractors and service companies. Now, the revenue division fixed the effective date for exemption which starts from August 18, 2018 in the subject mentioned notification specifically after the word "vessels" in continuance of heading "CONDITIONS WITH REFERENCE TO CLAUSES (1), (2) and (2a) and in condition (vii).

Please click on the link below to read original Notification.

https://khilji.net.pk/wp-content/uploads/2019/08/2019851382543558SRO904of2019.pdf

Sindh Revenue Board (SRB) NOTIFICATION

Introduction

Sindh Revenue Board (SRB) issued SROs ref SRB-3-4/29/2019, SRB-3-4/31/2019; and, SRB-3-4/32/2019 on August 3, 2019

Commentary

- i. Notification SRB-3-4/29/2019 amends description of services and conditions and restrictions for exemption under the heading of tariff No. 9802.4000, from "Advertisement in newspapers and periodicals" to "Advertisement in newspapers and periodicals published in Sindh", in order to limiting the criteria to grant exemption to only those which are published in Sindh.
 - Further, a new entry 9802.9000 ("Advertisement on the websites of such of the newspapers and periodicals as are published in Sindh") has been added, to exempt the whole of tax leviable on the advertisements on the websites of newspapers and periodicals that are published in Sindh.
- ii. In order to make exemption of aforementioned services effective, change in Sindh Sales Tax on Services Rules, 2011, has been made whereby newspapers and periodicals that are published in Sindh and advertisement transmitted through or displayed at the website or web pages of the such newspapers and periodicals has been excluded from preview of taxable advertisement services.

iii. Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 have also been amended vide notification no. SRB-3-4/32/2019 in order to exclude receiver or procurer of advertisement services from the status of withholding agent on Advertisement in newspapers and periodicals published in Sindh and Advertisement on the websites of such of the newspapers and periodicals as are published in Sindh.

The said notifications will be effective from July 01, 2019.

Please click on the link below to read original Notifications.

https://khilji.net.pk/wp-content/uploads/2019/08/combinepdf-3-1.pdf

FBR CIRCULAR

Federal Board of Revenue through a communication to all Chief Commissioners Inland Revenue of LTUs / RTOs has issued Extension of following Filing of Submissions

Items	Due Date	Extended Date
Annexure C and Annexure I	10 Aug 2019	16 Aug 2019
Payment of Sales Tax and Federal	15 Aug 2019	19 Aug 2019
Excise Duty		C
Submission of Sales Tax and	18 Aug 2019	21 Aug 2019
Federal Excise Return		

Please click on the link below to read original Circular.

https://khilji.net.pk/wp-content/uploads/2019/08/2019891581032139DateExtensioninSalesTaxReturnJuly19.pdf

FBR CIRCULAR

Federal Board of Revenue through a communication to all Chief Commissioners Inland Revenue of LTUs / RTOs has issued Extension of following Filing of Submissions

Items	Due Date	Extended Date
Annexure C and Annexure I	10 Aug 2019	19 Aug 2019
Payment of Sales Tax and Federal	15 Aug 2019	21 Aug 2019
Excise Duty		
Submission of Sales Tax and	18 Aug 2019	23 Aug 2019
Federal Excise Return		

Please click on the link below to read original Circular.

https://khilji.net.pk/wp-content/uploads/2019/08/2019816178145886DateExtensionSalesTaxReturnforJuly19.pdf

FBR CIRCULAR

Federal Board of Revenue issued Circular No 13 of 2019 on August 20, 2019.

The aforementioned Circular has been issued to explain the section 109A of the Income Tax Ordinance (ITO), 2001. The said section was inserted vide Finance Act, 2018 and is applicable from TY 2019. The purpose is to explain the income and taxation of income attributable to a "Controlled Foreign Company (CFC)" earned by a resident person.

Generally income of resident Pakistani from a foreign company owned by him is taxed on received basis. However the income from Controlled Foreign Company (CFC) is to be taxed at earned basis.

The Explanation defines CFC, Active business income, extent of active business income to be included in taxable income and states exclusions in cases wherever applicable.

The explanation also provides the method of calculating the taxable income earned from CFC to be included in owner of CFC.

Please click on the link below to read original Circular.

 $\underline{https://khilji.net.pk/wp\text{-}content/uploads/2019/08/2019820148610837circularno.13of2019\text{-}5.pdf}$

Please contact in case any further clarification is needed in this regard

EVENTS OF THE MONTH

KHILJI & CO WORKSHOP ON FINANCE ACT CHANGES 2019

Here are some click of the event described in BIG NEWS OF THE MONTH



TAX REGULATIONS IN I.T INDUSTRY

CXO Pakistan Organized an Event wherein Mr. Sharif Ud Din Khilji (CEO of Khilji & Co. Chartered Accountants) conducted a Training on the aforementioned topic.







SOCIAL MEDIA PRESENCE

We at Khilji & Co, Chartered Accountants are fully aware of the fact that in this modern day and age connectivity is the key. Hence, we keep of striving for this through various social media forums. Please visits our pages and do provide your valuable comments.

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