

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



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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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LAHORE HIGH COURT-INCOME TAX REFERENCE NO. 155206/2018 I.T.R. No. 155206/2018

Parties: COMMISSIONER IR (PETITIONER)

VS.

MANNOWAL TEXTILE MILLS LIMITED (RESPONDENT)

Date of Order: May 23, 2019

Issue Involved

Admissibility of Expense On Account of **“Provisioning Of Gratuity Payment”** not recognized by the Commissioner

Brief Facts:

The respondent has filed an appeal before tribunal on the issue of “disallowance of deductions w.r.to provisioning of gratuity” against the original assessment which has duly been allowed by the tribunal and decided against the department. Being aggrieved department has filed reference application before LHC against judgement passed by the tribunal on dated October 13, 2017 on a question of law that Appellate Tribunal had erred in law and erroneously ordered deletion of additions made by disallowing expenditure with respect to provisioning of gratuity are contrary to the mandate of section 21(e) of the Income Tax Ordinance, 2001. The department contended that respondent had made no contribution towards an approved gratuity fund and in violation of condition precedent for claiming deductions as an admissible expenditure in terms of section 21(e) of ITO, 2001.

OBSERVATION OF THE COURT:

The learned court has observed the following issues:

- i) *Whether section 24(g) of repealed Ordinance and section 21(e) of Ordinance, 2001, are to be treated as pari-materia, hence, be construed as such OR both the provisions differ in their scope, construction and application?*
- ii) *Whether the judgments, relied upon and referred to by the learned counsel for respondent taxpayer, provide any rule of law / ratio decidendi to be followed while determining the question of law proposed?*

DECISION:

The Honorable Court after discussing the legal provisions and case laws presented before this forum has decided the reference application in favor of department in following words:

Quote

“In brief, the judgments referred by the learned counsel for the respondent taxpayer, some of which are also relied upon by the Appellate Tribunal, may be authorities with respect to their facts and circumstances and laws discussed therein, but same have had no bearing / relevance with regard to the questions of law proposed for our opinion and determination in this case. It is notable that none of the judgments, referred had discussed and interpreted section 21(e) of Ordinance, 2001 and its peculiarity, when compared with section 24(g) of the repealed Ordinance. Therefore, mere provisioning of gratuity payments – payable in future subject to the happening of contingency – under mercantile method of accounting would not constitute compliance of section 21(e) of Ordinance, 2001 and allow deductions claimed in this behalf”.

“In view of the aforesaid, we opine that Appellate Tribunal was not justified to hold and declare that mere provisioning for gratuity payments constitute allowable / admissible deductions, in terms of section 21(e) of Ordinance, 2001. Our answer to the question of law, therefore, is in Negative. This reference application is decided in favor of the department and against the respondent taxpayer”.

Un-quote

LAHORE HIGH COURT-INCOME TAX REFERENCE NO. 10035/2017 W.P. No. 10035/2018

PARTIES INVOLVED

HAPPY MANUFACTURING COMPANY (PVT.) LTD (**PETITIONER**)
VS.
FEDERAL BOARD OF REVENUE (**RESPONDENT**)

DATE OF ORDER: June 13, 2019

ISSUE INVOLVED:

SELECTION OF AUDIT BY THE BOARD (FBR) UNDER SECTION 214C OF THE INCOME TAX ORDINANCE, 2001

BRIEF FACTS

The provision of section 214C of the Ordinance for selection of Audit by Board was introduced through Finance Act, 2010. Consequently, the Federal Board of Revenue (**Board**) issued Audit Policy, 2016 to conduct parametric selection of audit in terms of section 214C of the Ordinance. The petitioner was informed through notice dated 19.1.2017, that petitioner's case has been selected for audit and that said audit would be held in terms of section 214C of the Ordinance. The petitioner requested for audit parameters on the basis of which, the petitioner was selected for audit through its representation on 20.2.2017 under section 7 of the Federal Board of Revenue Act, 2007 (**FBR Act**).

However, the said representation was declined on dated 29.3.2017 on the ground that in view of section 214C (1A) of the Ordinance, the audit parameters could not be communicated to the petitioner. The similar response was also given to other petitioners who were selected for audit under parametric selection. All these petitioners being aggrieved have filed these constitutional petitions challenging the vires of subsection (1A) of section 214C of the Ordinance (herein after referred to as **impugned provision**).

OBSERVATION OF THE COURT

The learned court has observed the following issues:

- i) *Violation of petitioner's fundamental right of fair trial as enshrined in Article 10-A of Constitution of Pakistan, 1973.*
- ii) *Grant of arbitrary discretionary power to Board u/s 214C of Income Tax Ordinance, 2001 read with rule 231F of Income Tax Rules, 2002 and kept the parameters for audit selection confidential is not permissible under the law and in violation of Article 19 & 19-A of the Constitution and also not cognizant disclosure of parameters for selection of audit by Board under Sales Tax Act, 1990 and Federal Excise Duty, 2005.*
- iii) *Discussion on "reasonableness" with respect to nature of right infringed.*

DECISION

The Honorable Court after discussing the legal provisions and observations from various case laws has decided the reference application in favor of petitioners in following words:

Quote

1. *"The impugned provision is construed and read down to the effect that under subsection (1A) of Section 214C of the Ordinance, the Board shall keep the parameters confidential. However, once persons or classes of persons are selected for audit under section 214C of the Ordinance, they shall be informed about the particular risk parameter applied to them for selection of audit, if demanded by them for their information.*
2. *The impugned orders for not disclosing the specific parameter applied to petitioners for selection of their cases for audit under section 214C of the Ordinance, are declared to be illegal and without lawful authority and therefore set aside.*
3. *Consequently, the respondent Board is directed to inform the petitioners forthwith if requested by them, the specific parameters on the basis of which, their cases were selected for audit under section 214C of the Ordinance.*
4. *It is clarified that the scope of this judgment is only confined to vires of subsection (1A) of Section 214C of the Ordinance and its consequential effects therefore, if petitioners have raised any other issue in these petitions which is not discussed and adjudicated in this judgment, they will be at liberty to raise that issue afresh in appropriate proceedings."*

Un-quote

PESHAWAR HIGH COURT-INCOME TAX W.P NO. 110-A/2017 W.P NO.110-A OF 2017

PARTIES INVOLVED

GAS MASTERS CNG STATION (PETITIONER)

VS.

FEDERATION OF PAKISTAN & OTHERS (RESPONDENT)

DATE OF ORDER: March 22, 2018

ISSUE INVOLVED

Unnecessary delay in payment of refund to petitioner hence amounts to maladministration

BRIEF FACTS

The petitioner has filed an writ petition before Peshawar High Court on the issue of “delay in payment of refund claim” against the Presidential order setting aside the recommendations of Federal Tax Ombudsman.

The petitioner filed application for payment of refund to Commissioner Inland revenue who instead of processing the refund application issued notices to taxpayer for alleged non-compliance of section 116(2) and section 165 of ITO, 2001 and penalized u/s 182. Being aggrieved the taxpayer has filed writ application before LHC against order passed by President of Islamic Republic of Pakistan on dated January 2, 2017.

OBSERVATION OF THE COURT

The learned court has observed the following issues:

- i) Only the delay in the process of assessment etc. and settlement of claim of refund by the revenue official is amenable to the inquiry and investigation of FTO and not the order itself.
- ii) FTO has no jurisdiction to declare the said order illegal and unjustified as it is appealable before Commissioner (Appeals) under section 127 of Income Tax Ordinance of 2001.
- iii) That the enabling provisions of the FTO Ordinance, 2000 cannot be stretched to the extent to render the effective legal mechanism of filing appeal against the order of revenue hierarchy redundant.

DECISION

The Honorable Court after discussing the legal provisions and case laws presented before this forum has decided the reference application in favor of department in following words:

Quote

“Even otherwise it is settled law that the Courts must avoid a head on clash of seemingly contradicting provisions of law and must harmonize the contradictory provisions by interpreting not only the provisions but also the wisdom of the legislature in order to give effect to both the provisions, thus, in case of any conflict of two provisions of law the courts have to follow the harmonious interpretation and not attribute redundancy to any provisions of law rather both of the conflicting provisions of law are to be harmonized. Therefore, the enabling provisions of the Ordinance, 2000 cannot be stretched to the extent to render the effective legal mechanism of filing appeal against the order of revenue hierarchy redundant. Reliance in this regard is placed on Collector of Customs, Customs House, Karachi v. Syed Rehan Ahmed (2017 SCMR 152), Accountant General Sindh and others v. Ahmed Ali U. Qureshi and others (PLD 2008 SC 522) and Lucky Cement Ltd, v. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar (2015 SCMR 1494).”

“Therefore, the impugned order of the Worthy President of Pakistan that the order of FTO was without jurisdiction is legally and factually correct, which does not call for any interference by this Court. According these writ petitions are dismissed. However, the petitioners are at liberty to approach the proper forum against the impugned order on their refund and imposition of penalty, if so desired ”.

Un-quote

NOTIFICATIONS / CIRCULARS

FBR CLARIFICATION

INTRODUCTION

FBR issued has clarification in response to queries raised for the continuation of application of Serial No 1 and 3 of Part II of the First Schedule as well as section 235B of the Income Tax Ordinance, 2001, after abolition of SRO 1125(I)/2011 relating to zero rated sectors and SRO 480(1)/2007 specifying Sales Tax Procedures Rules, 2007 for steel melter and composite units. The clarification also includes the Legal Opinion from Ministry of Law and Justice for the above referred matter.

BRIEF COMMENTARY

The clarification is self-explanatory, however, the crux matter can be summarized as follows:

1. Reduced rate under section 148 provided to Manufacturers and Commercial Importers as specified in the Part II of the First Schedule would remain available to eligible persons despite rescission of SRO 1125 of 2011.
2. Provisions of section 235-B will remain available to steel melters and composite units registered for the purposes Sales Tax Special Procedure as on June 29, 2019.
3. Concession granted under clause 45(A) of Part IV of Second Schedule will remain available for eligible persons.

LINK OF DOCUMENT

<https://khilji.net.pk/wp-content/uploads/2019/09/2019931091631182Clarification-IncomeTax.pdf>

SECP NOTIFICATION

INTRODUCTION

Security and Exchange Commission of Pakistan issued Notification ref: S.R.O. 961 (I)/2019.

COMMENTARY

APPLICATION OF AMENDMENTS BROUGHT THROUGH S.R.O. 888(I)/2019 DATED JULY 29, 2019 IN FOURTH AND FIFTH SCHEDULE OF THE COMPANIES ACT, 2017

SECP vide S.R.O. 961 (I)/2019. dated 23rd August 2019 specified that the amendments brought through S.R.O. 888(I)/2019 dated July 29, 2019 in Fourth and Fifth Schedule of the Companies Act, 2017 shall be applicable on companies preparing financial statements as on June 30, 2019 and onwards.

DOCUMENT LINK

<https://khilji.net.pk/wp-content/uploads/2019/09/Notification-4th-5th-schedule-applicability-date.pdf>

SECP NOTIFICATIONS---IFRS

INTRODUCTION

Security and Exchange Commission of Pakistan issued Two Notifications ref: S.R.O. 985 (I)/2019 and S.R.O. 986 (I)/2019 on September 2, 2019.

COMMENTARY

S.R.O. 985 (I)/2019

REQUIREMENTS OF IFRS 9 (FINANCIAL INSTRUMENTS) WITH RESPECT TO APPLICATION OF EXPECTED CREDIT LOSSES METHOD

SECP vide S.R.O. 985 (I)/2019 dated the 2nd September, 2019 granted exemption from the requirements of “IFRS 9 (Financial Instruments) with respect to application of Expected Credit Losses method” till 30th June 2021 to all companies holding financial assets due from the Government of Pakistan, provided that such companies shall follow relevant requirements of IAS 39 – Financial Instruments: Recognition and Measurement, in respect of above referred financial assets during the exemption period.

DOCUMENT LINK

<https://khilji.net.pk/wp-content/uploads/2019/09/Notification-IFRS-9-Final.pdf>

S.R.O. 986 (I)/2019

EXEMPTION FROM REQUIREMENTS OF INTERNATIONAL FINANCIAL REPORTING STANDARDS (“IFRS”) TO ALL COMPANIES THAT HAVE EXECUTED THEIR POWER PURCHASE AGREEMENTS BEFORE JANUARY 1, 2019

SECP vide S.R.O. 986 (I)/2019 dated 2nd September, 2019 grants exemption from requirements of International Financial Reporting Standards (“IFRS”) to all companies that have executed their power purchase agreements before January 1, 2019, as follows-

- (a) IFRS 16 (Leases) to the extent of the power purchase agreements executed before the effective date of IFRS 16 i.e. January 1, 2019;
- (b) International Accounting Standard 21 (The Effects of Changes in Foreign Exchange Rates) to the extent of capitalization of exchange differences; and
- (c) In case of capitalization of exchange differences under (b) above, recognition of embedded derivative under IFRS 9 (Financial Instruments) shall not be permitted.

DOCUMENT LINK

<https://khilji.net.pk/wp-content/uploads/2019/09/Notification-IFRS-16-all-companies.pdf>

FBR CIRCULAR

INTRODUCTION

Federal Board of Revenue issued circular ref: C.No. 9 (11)ST-LPE/Misc/2016 dated September 16, 2019

COMMENTARY

Through the aforementioned Circular, FBR has issued extension in the date for submission of Sales Tax and Federal Excise Return for the Tax Period of August 2019.

The scheduled date of above return was September 18, 2019 which has now been extended upto **SEPTEMBER 20, 2019**.

DOCUMENT LINK

<https://khilji.net.pk/wp-content/uploads/2019/09/20199161695220140DateExtensioninSTReturnforAug2019.pdf>

SRB CIRCULAR

INTRODUCTION

Sindh Revenue Board issued Circular 5 of 2019 on September 16, 2019.

COMMENTARY

Through the aforementioned Circular, SRB has facilitated the Registered Persons including Withholding Agents who has adopted the SRB's recent introduced system of STRIVE.

Sindh Revenue Board has extended the the date of e-filing of Withholding Tax Returns i.e. Form SST03 Or SSTW-03 (as the case may be) for the Tax Period of August 2019 upto **SEPTEMBER 27, 2019**.

DOCUMENT LINK

<https://khilji.net.pk/wp-content/uploads/2019/09/SRB-Extension.pdf>

SECP GENERAL ORDER 2019

INTRODUCTION

Securities and Exchange Commission of Pakistan (SECP) vide S.R.O. 1048 (I)/2019 dated 11th September, 2019 issued "Companies (Submission of Information regarding Income Tax Return) General Order, 2019", hereinafter referred as "General Order" requiring companies to file compliance certificate with respect to its status of compliance with the requirements of filing of income tax return under the Income Tax Ordinance, 2001.

COMMENTARY

Khilji and Co has prepared a detailed commentary on this General Order, which can be accessed by clicking link given hereunder.

<https://khilji.net.pk/wp-content/uploads/2019/09/KCO10SPLMNT.pdf>

DOCUMENT LINK

<https://khilji.net.pk/wp-content/uploads/2019/09/Companies-General-Order-2019.pdf>

FBR CIRCULAR

Federal Board of Revenue has issued Circular No 14 of 2019 (ref: C.No.2(1)Contd/I.Tax/2018 on September 30, 2019. This Circular states that the Date of Filing of Income Tax Returns / Statements for Tax Year 2019 has been **extended upto October 31, 2019**

The new date i.e. October 31, 2019 will be applicable for Individuals, AOPs and Companies.

For Companies the extension is conditional upon 95% of tax payment.

Please click below to read the entire Circular

<https://khilji.net.pk/wp-content/uploads/2019/09/2019930219222742ExtensionindateoffilingofITReturns.pdf>

SECP NOTIFICATION

INTRODUCTION

Securities and Exchange Commission of Pakistan issued SRO # 1125 (I)/2019 dated September 20, 2019.

COMMENTARY

Securities and Exchange Commission of Pakistan (SECP/Commission) wide SRO # 1125 (I)/2019 dated September 20, 2019 has delegated powers and functions of the Commission to Commissioner, Corporatization and Compliance Department (CCD) of Company Law Division with respect to Companies (Further Issue of Shares) Regulations, 2018 as explained below: -

Sr. No.	Relevant regulation of the Companies (Further Issue of Shares) Regulations, 2018	Nature of powers / functions delegated to Commissioner, Corporatization and Compliance Department (CCD)
1.	3(5)	To extend time for book closure in case of issuance of right shares.
2.	9(xiii)	To approve subsequent variation in respective rights, privileges or class of such share capital, where a company has issued ordinary shares with differential rights or preference shares.
3.	11	To approve issuance of shares with differential rights.
4.	20	To impose penalty for failure or refusal to comply with or contravention of the provisions of the regulations.

APPLICATION

- This notification applies to companies, other listed companies, excluding companies involved in the business of Insurance under the Insurance Ordinance, 2000 and the Non-Banking Finance Companies or notified entities as referred to in Section 282A of the repealed Companies Ordinance, 1984.
- This Notification shall not affect anything done under or in pursuance to any previous notifications amended as aforesaid by this notification.
- Any pending proceedings or applications under previous notifications shall stand transfer to the delegated authority provided in this Notification forthwith who shall proceed with the matter as it stands prior to the coming into the effect of this Notification.

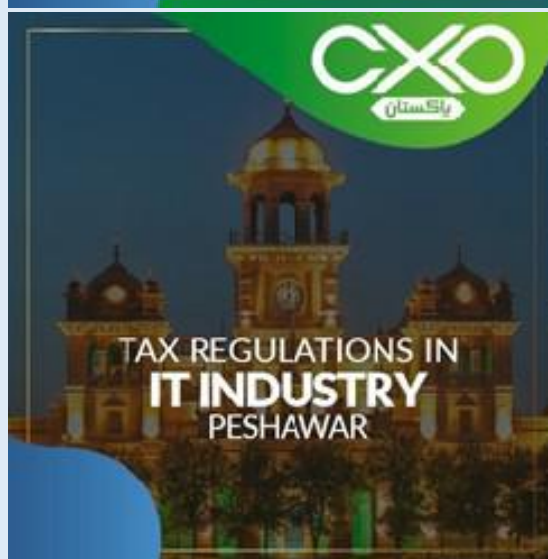
DOCUMENT LINK

<https://khilji.net.pk/wp-content/uploads/2019/09/Delegation-of-Power-Further-Issue-of-Capital.pdf>

EVENT 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 in Peshawar on the aforementioned topic.



VIDEO LINKS OF CXO SESSIONS

Lahore Session

<https://www.facebook.com/CXOPakistan/videos/476183919891008/>

Islsmabad Session

<https://www.facebook.com/CXOPakistan/videos/368499797155703/>

SOCIAL MEDIA PRESENCE

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- **YOUTUBE:** https://www.youtube.com/channel/UCA4UjhDS_AMKNOFVu7_Qjyg