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

KHILJI & CO.
Chartered Accountants

NEWSLETTER
FEBRUARY 2020

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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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Case Law – Appellate Tribunal Inland Revenue, Islamabad ITA No. 565-A/IB/2015

Date of Order: 17-02-2020

Brief Facts:
The case in hand involves the Appeal, filed by the Commissioner Inland Revenue (Legal Division), LTU Islamabad against the order made by the Commissioner Inland Revenue (Appeals-I) in favor of the respondent/ taxpayer namely M/s OPI Gas Private Limited.

Originally a show-cause notice, was issued by the officer concerned to the respondent/ taxpayer having declared loss for the year Rs. 55,221,584/- . During course of scrutiny of records, it was observed that the receipts under the head "other income" amounting to Rs. 26,580,540/- were omitted from the figure of gross turnover, thus resulting in loss on account of of payment of tax to treasury, under applicable provisions of section 113 of the Ordinance. Thus, although the respondent/ taxpayer had its return of income for tax year 2011 deemed assessed under section 120(1)(b) of the Income Tax Ordinance, 2001 ("the Ordinance") , however same was amended by the assessing officer by making an order in writing under section 221 of the Ordinance, concerning with, rectification of mistakes in order by the Commissioner/ Commissioner (Appeals) or Appellate Tribunal.

Legal provisions, thoroughly deliberated during course of the proceedings by the learned counsels, representing appellant and respondent, on which outcome of the case is dependent, predominantly embroiled:

a) Whether the assessing officer is empowered to amend, order deemed assessed under section 120(1)(b) of the Income Tax Ordinance, 2001 by making an order in writing under section 221 of the Ordinance; and

b) Whether, the assessing officer could re-assess tax liability by invoking any provision of law, demanding elaborate discussion or detailed probe or process of determination *(in this case section 113 of the Ordinance),* while making such a rectification order passed under section 221 of the Ordinance.

Thus limiting the powers bestowed upon while making orders made in writing under section 221 of the Ordinance.

Respondent Defense
The legal counsel representing the Respondents vehemently contended against the stated arguments presses by the Appellant/ Department, and maintained that original order passed by the assessing officer under section 221 of the Ordinance is illegal and void ab-initio, as the provisions of section 221 of the Ordinance could not be invoked against the order, treated/ deemed to be assessed and stated that order passed by the learned CIR (A) is a speaking order and there is no infirmity involved, thus merits dismissal of the appeal.

Decision Summary:
Honorable ATIR particularly contemplated section 120(1), 122 and 221 of the Ordinance and wherever necessary discussed various previously settled cases involving similar instances and provisions of the Ordinance, during hearing of the case in order to establish the opposing claims, stressed upon by both the Appellant and the Respondent. Honorable ATIR after much sought discussion, annulled the appeal made by the Department, while making following meaningful observations and final verdict in this regard.

Quote. "*5. It can be seen from combined reading of sections 120, 122 and 221 of the Ordinance reproduced above, it becomes very clear that powers under these provisions are not overlapping rather independently clearly intended to operate within their compass. Section 221 of the Ordinance relates to the rectification of mistakes which are apparent from the face of record.* ***The words used in the said provisions are very specific and purposeful "any order passed by him" This clearly does not include an order which is deemed to have been Issued by the Commissioner by fiction of law which is the case for assessment orders under sect on 120 of the Ordinance. The words "an assessment order treated as Issued under section 120" used in section 122(1) of the Ordinance are clearly distinguishable from the words used in section 221 of the Ordinance which says "any order passed by him" The act of passing of formal order by any Officer of Inland Revenue presupposes an application of mind and in most cases adjudication on merits after hearing the parties. Thus there is a marked distinction between the deemed order and the order passed by the authority after fully applying his mind and giving proper opportunity of being heard to the person. The principle of interpretation of statute that every word used in a statute has to be given effect to and no word or provisions of a statute is to be treated as surplus age and redundant.*** *The case of East and West SteambshIg Co vs Queensland Insurance Co.Ltd reported as PLD 1963 SC 395 can be cited In this regard. A similar observation is made by the Supreme Court In the case of JaIaI Muhammad Shah vs. Federation of Pakistan reported In PLD 1999 SC 395. By applying the aforesaid principle of interpretation the words 'any order passed by him' used in section 221 of the Ordinance expressly and deliberately provides that the authority can rectify such order which is passed by him. If the order is not passed by the Commissioner no question of rectification of mistake committed by him arises which can only be the case. If there is an order passed by an officer after conscious application of mind and in which a mistake has crept which is sought to be rectified at a later stage. The rectification is permissible only to "amend any order passed by him. It is not mentioned in section 221 of the Ordinance that the order treated to have been issued under section 120 of the Ordinance because the deemed order did not amount to an order passed by the authority.* ***Had it been the intention of the legislature it become necessary to introduce the specific provisions or amendment with certain words to cater the eventuality of the deemed order in section 221 that a deemed order under section 120 can be amended in case of a mistake apparent from record.*** **" Unquote.** ***emphasis supplied.***

Quote. "*7. Now I come to second question, I have observed that in the instant case, the question of chargeability of minimum tax under the provisions of section 113 of the Ordinance is involved. It is a debatable point that the appellant whether comes within the ambit of section 113 and is liable to pay minimum tax.* ***The perusal of the orders of the Assessing Officer and the Commissioner Inland Revenue (Appeals) would make it clear that exercise undertaken by the Assessing Officer under section 221 of the Ordinance was not simply in respect of a mistake apparent on the face of the record within the contemplation of section 221 ibid rather it was re-assessment of the tax liability of the appellant on the basis of the provisions of law. The expression mistake apparent on record means the error or mistake so manifest and clear which, if is permitted to remain on record may have material effect on the case. But an error of fact or law which having direct nexus with the question of determination of rights of parties affecting their substantial rights or causing prejudice to their interest is not a mistake apparent on the record to be rectified under section 221 ibid. The mistake must be of the nature which is floating on the surface of record and must not involve an elaborate discussion or detailed probe or process of determination.*** *The scope of rectification application is very limited keeping In view the law laid down by the Apex Court of Pakistan in the Judgments reported as PLD 1964 SC 410 and CIT Karachi Vs. Shadman Cotton Mills Ltd Karachi (2008 PTD 253) and CIT Vs. National Foods Laboratories (1992 SCMR 687) wherein it was held as under -*

"it is well settled law that rectification jurisdiction is a very limited jurisdiction, which can only be exercised for rectifying the mistake, which is apparent on record or which is floating on the surface of record. This jurisdiction cannot be assumed to set aside a well-reasoned order, which is passed after due deliberation, application of mind and due consideration of relevant provisions of law and the applicable case law. "

The Hon'ble Supreme Court of Pakistan in the case of M/s National Foods v CIT cited supra while defining the scope of rectification, has held that a mistake should be apparent from record floating on surface and may not require any investigation or further evidence. It has been further held that a mistake which is sought to be rectified must be so obvious and apparent from record that it may immediately strike on the face of it*. It may not be something which may be established by a long drawn process of reasoning on Issues on which there could be conceivably two Views or opinions. It may further observe that the scope of rectification is limited to the extent of rectification of an" error apparent from record" hence the said provision cannot be invoked as an alternate or substitute of an appeal revision or review. ***" Unquote. ***emphasis supplied.***

Quote. "*8. **For the forgoing reasons, I will hold that the provisions of section 221 of the Ordinance cannot be invoked in respect of an assessment order treated to have been issued under section 120(1)(b) of the Ordinance. If at all the Commissioner deems it necessary to make an amendment in the deemed order passed under section 120(1)(b) ibid, this can only be done by invoking the provisions of section 122 of the Ordinance.**" **Unquote. ***emphasis supplied.***

Case Law – Sindh High Court, Suits Nos. 942, 1976, 2068, 1154, 1877, 1135, 1123, 974, 993, 1213, 1184, 665 and 716 of 2016
Date of Order: 22-02-2018

Brief Facts:

The case in hand involves various connected suits filed against one legal controversy, i.e. as to whether the renting of immovable property *(by the landlord to a tenant*) falls within the definition of providing or rendering services and/or falls under the definition of economic activity and consequently liable to pay sales tax on services under, the Sindh Sales Tax on Services Act, 2011. Background of the case comprises, that through introduction of Finance Act, 2015 new clause 72C i.e. "renting of immovable property services" was inserted, thus making such services taxable, by renting of immovable property under newly inserted clause 72B of the Finance Act, 2015.

Thus much necessitated deliberation while deciding the case was also paid to section 3 of the Sindh Sales Tax on Service Act, 2011 ("the Act") and what constitutes an economic activity as per section 4 of the Act, from stand point of the landlord/ person rendering renting of immovable property services.

Decision Summary:
The Honorable High Court after careful consideration resolved the issue by affirming this in negative and declared

Quote: *"4. "**that mere letting out of an immoveable property by the landlord to a tenant on rent for consideration does not involve any element of providing any taxable services**, therefore, the amount of rent received by the landlord from the tenant cannot be subjected to tax, while invoking the provisions of Section 2(72C) read with Tariff Heading 9806.3000 of First Schedule and Part-B of the Second Schedule* to the Sindh Sales Tax on Services Act, 2011." **Unquote.** ***emphasis supplied.***

Case Law – Lahore High Court, W.P. No. 131594/2018
Date of Order: 03-04-2018
Brief Facts:

The case in hand relates to the precise authority of Federal Board of Revenue (FBR) and the Punjab Revenue Authority (PRA) and which of these two authorities will exercise the power to require the taxpayer to have itself registered and to pay sales tax.

Background of the case involves that notice was served upon the appellant/ taxpayer by the respondent/ FBR to get itself registered under the provisions of section 14 Sales Tax Act, 1990 ("the Act 1990"), followed by subsequent notice served under section 11 of the Act 1990 on account of assessment of tax & recovery of tax not levied or short levied or erroneously refunded.

Respondent Claim

The learned counsel of respondent stated that the petitioner is manufacturer of copper wires and is thus liable to be registered under the Act, 1990 and since the petitioner has failed to comply with the registration notice, compulsorily registration is binding.

Appellant Plea

On the contrary, the learned counsel on behalf of the petitioner/ taxpayer argued that, for the business undertaken by his client, covered by Sr. No.37 of the second schedule to the Punjab Sales Tax on Services Act, 2012 ("the Act 2012"), same is already registered with PRA. Therefore, the petitioner is not liable to get registered with FBR also and the insistence by the respondent/ FBR with the petitioner/ taxpayer, to have the same business registered with FBR is illegitimate, thus cannot be fulfilled.

Decision Summary:

The Honorable High Court after careful consideration resolved, that the tax liability of the registered persons in all such cases cannot be made a rolling stone and if a registered person like the petitioner/ taxpayer is quite willing to pay the tax, then only one of the authorities can take cognizance of the matter and recover liability and the imposition. The said imposition cannot be permitted to be recovered by both the authorities viz. FBR and PRA.

The Honorable High Court further stated that this matter is to be decided between FBR and PRA, within reasonable time, instead of compelling and to burdensome taxpayer/ appellant to get its business registered with both the FBR and PRA and till such a resolution is reached, matter relating to the registration of the petitioner/ taxpayer and the payment of sales tax in terms of the impugned show cause notices are to held in abeyance.

NOTIFICATIONS / CIRCULARS

SRB (SINDH REVENUE BOARD) NOTIFICATION

INTRODUCTION

Notification SRB-3-4/8/2020 dated 6th February 2020 has been issued which prescribes further amendment to Sindh Sales Tax on Services Rules 2011. Major changes relate to filing of returns, Procedure for collection of Sales Tax on Telecommunication Services, services provided by beauty parlors, beauty clinics, slimming clinics, body massage centers, pedicure centers and services provided by health care center, gyms or physical fitness center etc. The amendments have been briefly discussed as follows:

COMMENTARY

RULE 13A

- After Rule 13, a new Rule 13A has been inserted which prescribes time and manner of submission of **Annexure C** of the return. On the same pattern as is required by FBR for sales tax returns, a registered person is now required to report its sales through Annexure C of the sales tax return for the period electronically by the 10th day of the month via SRB web-portal. Upon submission of Annex-C by the registered person, it shall then enable to enter in the Domestic Purchase Invoices (Annex –A of return) by the registered recipients of the taxable services for the purpose of their returns for the period.
- In case of supplies, purchases data on SRB web-portal shall be available to registered recipients upon submission of return by registered person/ supplier on their FBR portal for the period.
- The data of non-creditable inputs (relating to exempt and non-taxable supplies and services) and inadmissible inputs (e.g. services provided in the jurisdiction outside Sindh) shall be manually calculated and entered by the registered person in Annexure-A of the return for the period.
- Any incomplete Annexure-C submitted by registered person by the 10th day of the month, is required to be completed by the due date, prescribed for the filing of return for that period normally of 18th day of the month.

RULE 35

- In case of telecommunication services, as mentioned in the Second Schedule of the Act, due date for payment of tax is revised to 21st day instead of existing 15th day of the prescribed month.
- However, in case of post-paid telephone services and post-paid internet or broadband services including DCNS, content services, value added services and value-added data services, due date for payment of sales tax has been changed from 21st day of following month to 21st day of following second month.
- Further, due date for submission of monthly statement pertaining to provision or rendering telecommunication services and sales tax monthly return has been changed from existing 18th day of the month following the tax period to 24th day of the month following the tax period.

RULE 42C

- Rule 42 C has been amended in pursuance to the amendments made in notification No. SRB-3-4/8/2013 dated 1st July , 2013 vide notification dated 6th February, 2020.
- A new sub-rule (3A) has been inserted, whereby services provided or rendered by beauty parlours, beauty clinics, slimming clinics, body massage centers, pedicure centers, etc. shall be charged @ 10% as earlier notified vide notification No. SRB-3-4/8/2013 dated 1st July , 2013, subject to the limitations, conditions and restrictions prescribed therein.

- However, an existing registered service provider would pay reduced rate of 5%, provided that such service provider elects or opts to do so by electronically submitting Form "B" on SRB web-portal by 24th day of the February 2020 , thus option or election would become effective from the 15th day of the February 2020 or from a date of 3 days after its electronic submission whichever is later, subject to condition that Point of Sales (POS) is successfully linked with SRB system before the aforementioned effective date. Provided further that, where a person is commencing such an economic activity after 1st day of March 2020, election or option for reduced rate of 5% vide electronic filing of Form B may be made at least 14 days prior to commencement of economic activity.
- Election or option exercised for use of 5% shall remain effective for the financial year in which it is made and separate election for each of the forthcoming financial years is required to be made by the 21st day of July of that year.
- Any registered person issuing not serially numbered electronically invoices/ manually prepared invoices, i.e., not linked with SRB POS shall not be entitled to reduced rate of 5% as provided in sub rule 3A and 3B.

RULE 42CC

- A new sub Rule 42CC has been added relating to Services provided or rendered by Health care center, gyms or physical fitness centers etc. in pursuance to the amendments made in notification No. SRB-3-4/8/2013 dated 1st July, 2013.
- Through insertion of sub-rule (1) to (4), persons engaged in providing or rendering services of Health care center, gyms or physical fitness centers etc. classified under tariff headings "9821.2000 of the Second Schedule of the Act, are required to register itself under the Act and shall be charged at standard rate of 13%.
- However, through insertion of provisos of sub-rule (4), such an existing registered service provider would pay reduced rate of 5%, provided such a provider elects or opts to do so by electronically submitting Form "G" on SRB web-portal by 24th day of the February 2020 , thus option or election would become effective from the 15th day of the February 2020 or from a date of 3 days after its electronic submission, whichever is later, subject to condition that Point of Sales (POS) is successfully linked with SRB system before the aforementioned effective date. Provided further that, where a person is commencing such an economic activity after 1st day of March 2020, election or option for reduced rate of 5% vide electronic filing of Form G may be made at least 14 days prior to commencement of economic activity.
- Election or option exercised for use of 5% shall remain effective for the financial year in which it is made and separate election for each of the forthcoming financial years is required to be made by the 21st day of July of that year.
- Serially numbered proper invoices or bill of charges or electronically – generated invoices are required to be issued and any person not issuing serially numbered electronically invoices/ manually prepared invoices, i.e., not linked with SRB POS shall not be entitled to reduced rate of tax.
- Tax collected under this rule shall be deposited by the 15th day of the month, following the tax period to which it pertains, while due date of filing of return shall be 18th of that month.

SRB (SINDH REVENUE BOARD) NOTIFICATION

Introduction

Notification no. SRB-3-4/8/2013 dated 1st July 2013 issued by Sindh Revenue Board (SRB) relates to services on which reduced rate of sales tax is applicable subject to certain limitations, conditions and restrictions. Said notification has been further amended vide notification no **SRB-3-4/7/2020 dated 6th February 2020** whereby tax rate have been further reduced on certain services where registered persons opts/elects for such reduced rates and installs POS machines link with SRB portal and issues electronic invoices only through such POS only. The amendments are briefly discussed below:

Commentary

- Tariff headings "9810.0000, 9821.4000 and 9821.5000", namely services provided by beauty parlors, beauty clinics, slimming clinics, body massage centers, pedicure centers, etc. have been sub divided in two categories whereby existing clause with the tax rate of 10% has been kept unchanged except categorizing this as (a).

- A new sub-clause (b) has been added for above tariff headings whereby a reduced rate of 5% is applicable on services provided or rendered by beauty parlours, beauty clinics, slimming clinics, body massage centers, pedicure centers, etc., provided that registered person opts or elects through electronic submission on a prescribed "Form B" by the prescribed due date in this regard. Further, such registered person shall install POS machine, linked with SRB portal and shall issue all electronic sales invoices through such POS only. Furthermore, input tax credit/ adjustment shall not be allowed in this regard.

- A new Tariff Heading "9821.1000" relating to services provided or rendered by health care center, gyms or physical fitness center etc. has been added whereby a reduced rate of 5% shall be applicable provided that registered person opts or elects through electronic submission on prescribed "Form G" by the prescribed due date in this regard. Such registered person shall install POS machine, linked with SRB portal and shall issue all electronic sales invoices through such POS only and input tax credit/ adjustment shall not be allowed in this regard. Such services are currently taxed at standard rate of 13%.

The said notification shall take effect from 15th February 2020.

FBR INFORMATION

INTRODUCTION

Federal Board of Revenue issued Informative Circular, wherein it has condone the time limit for filing of Annex-H for the tax period of ***July 2019, August 2019, and September 2019 up to March 15, 2020.***

Annexure - H:

In Sales tax return Annexure H is a summary of stock (i.e. details of opening, closing stock, stock sold/consumed etc.).This annexure is mandatory for refund claimants and they may submit this statement within 120 days from due date of return filing of particular tax period.

http://download1.fbr.gov.pk/Docs/20202131725759452020-02-13(Annex-H).pdf

BLOG OF THE MONTH

KHILJI AND CO BLOGS

AUTHOR: MR. ABDUL HAFEEZ

CAPITAL GAIN TAX ON IMMOVABLE PROPERTIES

Up to tax year 2019 capital gain on sale of property was separately taxed on the basis of holding period of property as per following rates:.

For immovable property acquired on or after July 1, 2016

1	Where holding period of immovable property is up to one year.	10%
2	Where holding period of immovable property is more than or equal to one year but less than two years.	7.5%
3	Where holding period of immovable property is more than or equal to two years but less than three years.	5%
4	Where holding period of immovable property is more than three years.	0%

For immovable property acquired before July 1, 2016, other than those mentioned against S. No. 1

6	Where holding period of immovable property is up to three years.	5%
7	Where holding period of immovable property is more than three years:	0%

Through Finance Act, 2019, taxation of capital gain on immovable properties has been revamped and now capital gains are to be taxed at normal tax rates. However computation of taxable gain on disposal of open plot and constructed property have been provided as under:

S. No.	Holding period of open plot	Holding period of constructed property	Taxable Gain
1	Not exceeding one year	Not exceeding one year	100%
2	Exceeds one year but does not exceed eight years	Exceeds one year but does not exceed four years	75%
3	Exceeds eight years	Exceeds four years	0

To summarize, the gain on sale of immovable property is fully taxable if holding period is up to one year however if holding period is more than one year but up to 08 years or 04 years for open plot and constructed property respectively then 25% of such gain is exempt while in case holding period exceeds 08 years or 04 years for open plot and constructed property respectively then 100% of such gain is exempt from tax.

The taxable gain from sale of immovable property is to be added to taxable income under normal tax regime and tax rates provided for normal tax regime income under first schedule will be applicable. Determination of capital gain arising on disposal of immovable properties for tax year 2020 is explained with the help of following illustrations:

Illustration 1: An open plot was purchased on August 20, 2019. The cost of the plot amounts to Rs. 2,100,000. Said plot was sold on March 20, 2020 for a consideration of Rs. 2,900,000. Assuming that the plot was acquired and sold as per rates notified by the board.

Gain on sale of plot amounts to Rs. 800,000 (Rs. 2,900,000 – Rs. 2,100,000). Since the holding period of the plot is less than one year therefore taxable gain to be included in taxable income for the year would be Rs. 800,000 (100% of gain).

Illustration 2:

An open plot was purchased on May 30, 2019. The cost of the plot amounts to Rs. 3,000,000. Said plot was sold on June 15, 2020 for a consideration of Rs. 3,750,000. Assuming that the plot was acquired and sold as per rates notified by the board.

Gain on sale of plot amounts to Rs. 750,000 (Rs. 3,750,000 – Rs. 3,000,000). Since the holding period of the plot is more than one year but less than eight years therefore taxable gain to be included in taxable income for the year would be Rs. 562,500 (75% of gain).

Illustration 3:

A constructed property was purchased on April 15, 2016. The cost of the property amounts to Rs. 6,500,000. The property was sold on May 15, 2020 for a consideration of Rs. 8,500,000.

Gain on sale of property amounts to Rs. 2,000,000 (Rs. 8,500,000 – Rs. 6,500,000). Since the holding period of the property is more than one year but less than four years therefore taxable gain to be included in taxable income for the year would be Rs. 1,500,000 (75% of gain).

Illustration 4:

A constructed property was purchased on March 15, 2015. The cost of the property amounts to Rs. 5,500,000. The property was sold on March 20, 2020 for a consideration of Rs. 7,000,000.

Gain on sale of property amounts to Rs. 1,500,000 (Rs. 7,000,000 – Rs. 5,500,000). Since the holding period of the property exceeds four years therefore taxable gain to be included in taxable income for the year would be Nil (0% of gain).

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