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

KHILJI & CO.
Chartered Accountants

NEWSLETTER
JUNE 2021

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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 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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اَللّٰهُمَّ اِنِّیۡ اَعُوۡذُ بِكَ مِنَ الۡبَرَصِ وَالۡجُنُوۡنِ
وَالۡجُذَامِ وَسَیِّءِ الۡاَسۡقَامِ

Oh Allah I seek Your refuge from leprosy, insanity, mutilation and from all serious illnesses

COVID-19 PREVENTIVE MEASURES

- It is matter of our fundamental faith that Almighty Allah is the most merciful and beneficent and the foremost thing to do at all times particularly difficult times like these is to seek forgiveness from Allah for all our intentional and unintentional mistakes.

- Let us pray and seek forgiveness from Allah for all sins and wrongdoings committed by us deliberately or otherwise. May Allah keep all humanity including us and our families safe from this and all kinds of diseases. AMEEN

- While the spiritual prevention of all diseases including this CORONA should be sought through Namaz and Istaghfar however at the same time we have been taught through Quran and Sunnah to take all necessary measures and medicines against all such diseases while keeping faith that the power to cure remains with Allah.

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FORUM:	SUPREME COURT OF PAKISTAN
REFERENCE/CITATION:	CIVIL PETITION NO. 1972-L OF 2017
JUDGEMENT PASSED BY:	MR. JUSTICE UMAR ATA BANDIAL MR. JUSTICE SAJJAD ALI SHAH MR. JUSTICE MUNIB AKHTAR
PARTIES INVOLVED:	FATEH YARN (PVT.) LIMITED, FAISALABAD **(PETITIONER)** **VS.** THE COMMISSIONER INLAND REVENUE, FAISALABAD **(RESPONDENT)**
DATE OF ORDER:	JANUARY 15, 2021

Brief facts

The petitioner a private limited company is a registered person under Sales Tax Act, 1990. A show cause notice was served on 19.04.2006 asking an explanation as to why the entire output tax of Rs. 76.56 million for the period from February 2001 to March 2005 should not be recovered from it. The petitioner claimed input tax credit of Rs. 72.93 million and only deposited net tax of Rs. 1.215 million for the same period. Multiple follow-up notices were sent to the petitioner but return undelivered. As a result, the petitioner was proceeded against ex-parte. The Additional Collector vide order dated 18.07.2006 upheld the charge and ordered recovery of Rs. 76.53 million and rejected petitioner's claim of input tax of Rs. 72.93 million.

The petitioner filed an appeal before the Collector (Appeals) against the said order who vide order dated 11.09.2006 affirmed the decision of Additional Collector. The petitioner them filed appeal before Appellate Tribunal which in its order dated 01.07.2010 set aside the findings recorded by the two. As a result, the petitioner was discharged to pay output tax of Rs. 76.53 million and was allowed to claim input tax of Rs. 72.96 million. The department filed a reference before the learned High Court which through its judgement dated 24.05.2017 reversed the decision of learned Appellate Tribunal and endorsed the findings of the Additional Collector and Collector (Appeals).

The petitioner then filed leave to appeal before Supreme Court of Pakistan against the judgment of Lahore Hight Court. The primary grievance of the petitioner was that the leaned High Court answered the Reference in favour of respondent on the basis of questions which were neither rooted in law nor were discussed in the order of the learned Appellate Tribunal.

The Supreme Court while discussing that matter before us raised both questions of law and facts and stated that that it is settled preposition that superior courts cannot engage in factual controversies however, an exception has been carved out of situation where a substantial defect in the reading of oral or documentary evidence is pointed out. (Ref: *Abdul Majeed Vs. Muhammad Subhan (1990 SCMR 1245).* The Supreme Court was of the opinion that the learned High Court rightly intervened in the findings recorded by the learned Appellate Tribunal with respect to the petitioner's claim of input tax credit. The matter had been thoroughly examined by both the Additional Collector and the Collector (Appeals) who disallowed the input tax credit of Rs. 72.96 million since no reliable documentary evidence was provided (in fact evidence provided was fake). The learned Appellate Tribunal ignored this material fact and has committed a serious error which called for rectification. In Court's view, there were no grounds for interfering with the findings of the learned High Court on this issue.

The Court also observed that notice to petitioner was issued which covered period from February 2001 to March 2005 while sales tax authorities audited the record of petitioner from February 2001 to November 2001. An amount of Rs. 359,725 was ordered to be recovered from the petitioner. However, on appeal the Collector (Appeals) vide order dated 05.05.2005 set aside the Order in Original and accepted the contention of the petitioner.

This order was never challenged by sales tax department and attained finality. Any further scrutiny of this period is now barred by the doctrine of past and closed transaction. Consequently, this period was excluded from the purview of the impugned orders. Further, the Court stated that the allegation against the petitioner in the notice was for the period ending in March 2005 while subsequent orders passed imposed tax liability for the period ending in January 2006. The Court while stating quote from the case law titled The Collector Central Excise and Land Customs Vs. Raham Din (1987 SCMR 1840) that "an that an order of adjudication passed on the basis of a ground not stated in the notice is 'palpably illegal and void on the face of it". The Court stated that the purpose of serving a notice on a taxpayer is to notify him of the case against him. When such a document contains incomplete information, it can seriously prejudice the taxpayer's defense.

Accordingly, the Court excluded the additional period (March 2005 till January 2006) from the purview of the impugned orders passed by the Collector and Collector (Appeals) and ordered the taxing officer to recalculate the outstanding liability of the petitioner from the period December 2001 to February 2005.

Conclusion

The Honorable Court converted the petition into appeal and partly allowed in the terms that the period for which audit was conducted i.e. February 2001 to November 2001 and the period for which the Order in Original exceeded the period covered by the show cause notice from March 2005 to January 2006 shall stand excluded from the purview of the impugned order passed by the Assessing Officer and the Commissioner (Appeals)

FORUM:	SUPREME COURT OF PAKISTAN
REFERENCE/CITATION:	CIVIL APPEAL NO. 1125 OF 2020
JUDGEMENT PASSED BY:	MR. JUSTICE UMAR ATA BANDIAL MR. JUSTICE SAJJAD ALI SHAH MR. JUSTICE MUNIB AKHTAR
PARTIES INVOLVED:	COMMISSIONER INLAND REVENUE, ZONE- BAHAWALPUR, REGIONAL TAX OFFICE, BAHAWALPUR **(APPELLANT)** **VS.** SARFARAZ HUSSAIN & BROTHERS COMMISSION AGENT (**RESPONDENT)**
DATE OF ORDER:	JANUARY 28, 2021

The department (petitioner) sought to amend the deemed assessment order for tax year 2010 in respect of an Individual taxpayer (respondent). The department stated the reasons that the taxpayer had only declared agricultural income of Rs.500,000/, whereas the department had definite information that he had acquired immoveable property on or about 10.02.2010 in the sum of Rs.5,600,000/-. On such basis a notice dated 24.09.2011 was issued under Section 122(1) read with subsections (5) and (9) thereof, requiring the respondent to show cause as to why the deemed assessment order should not be suitably amended. Subsequently, on 07.12.2011, another notice, this time under section 111(1)(b) was also issued in respect of the aforesaid property.

The taxpayer was proceeded against ex parte who contested the matter thereafter by way of appeal and won relief before the learned Tribunal. The Tribunal concluded that the notice dated 24.09.2011 suffered from procedural defects that went to the root of the matter in as much as the notice did not specify which clause of section 122(5) was sought to be applied, and that separate notices ought to have been issued, one under subsection (9) and then another under subsection (5). Finally, it was held that there was, in fact, no definite information available with the department and that the concerned tax officer was merely "trying to fish out the material from the Taxpayer". The learned High Court also agreed with the Tribunal that there was no definite information within the meaning of law and that since the latter forum was the final finder of fact, its decision could not be challenged in tax reference.

The tax reference was accordingly dismissed.

Leave to appeal was granted to consider whether the findings and conclusions, especially as regards "definite information" were consistent with the law laid down by this Court in Commissioner of Inland Revenue-Zone I v. Khan CNG Filling Station 2017 SCMR 1717 ("Khan CNG").

Decision summary

First of all, the Court held that the facts of the Khan CNG case were far removed from those at hand and that decision does not have an direct bearing on, or relevance for, the appeal on hand.

The Honorable Court stated that subsection (8) of section 122 contains an inclusive definition of "definite information", which provides in material part that such information includes "information … on the acquisition, possession or disposal of any money, asset, valuable article or investment made or expenditure incurred by the taxpayer". At the relevant time, subsection (5) required that the deemed assessment order could only be amended "where, on the basis of definite information acquired from an audit or otherwise" the Commissioner was satisfied that any one of three clauses of the subsection was applicable. In the present case, there was of course no audit involved, and therefore the definite information could only have been "otherwise" acquired. One manner in which the information can be so acquired is by proceedings under section 111.

The Court held that a notice under section 111 was issued to the respondent. However, the sequence of the notices was crucial. The notice under section 122, subsections (1), (5) and (9) was issued first, on 24.09.2011 and it was only later, on 07.12.2011, that the notice under section 111 was issued. The first notice purported to state that "the department is in possession of definite information" regarding the investment allegedly made in immoveable property. That claim was repeated in the notice under section 111. In other words, the respondent was not given an opportunity, as is mandatorily required by section 111, to satisfy the tax authorities as to the source etc. of the funds by which the immoveable property was acquired. Rather, the department from inception, and throughout, proceeded on the basis that it already had definite information with it in this regard, such as was sufficient to allow the amendment of the deemed assessment order. However, that could not be so until first the proceedings under section 111 had culminated in an appropriate order. That order could have constituted the definite information as would allow the amendment of the deemed assessment order.

The Court further discussed that it is possible for both steps, i.e., the finding under section 111 and the amendment of the deemed assessment order to be done together, and for the notice under section 111 to be issued along with the notice to amend. However, in such a case, the proceedings and notice(s) must expressly so state on the face of it.

The Court held that notice under section 111 falls short since the department began with the premise that it already had definite information available with it, and the concerned officer proceeded accordingly.

Conclusion

The Honorable Court concluded that there was no definite information available within the contemplation of the statute. The conclusions arrived at by the learned Tribunal and learned High Court were correct and did not warrant interference by this Court. The Court dismissed the appeal.

FORUM:	LAHORE HIGH COURT
REFERENCE/CITATION:	STR No. 28 of 2012
JUDGEMENT PASSED BY:	MR. JUSTICE ABID HUSSAIN CHATTHA MR. JUSTICE MUHAMMAD SAJID MEHMOOD SETHI
PARTIES INVOLVED:	COMMISSIONER INLAND REVENUE **(APPELLANT)** **VS.** DESCON ENGINEERING LIMITED **(RESPONDENT)**
DATE OF ORDER:	JUNE 08, 2021

Brief Facts

Proceeding were initiated under Section 177 of the Income Tax Ordinance, 2001 and amendment in question was made by invoking provision of Section 122(1)(5) against the taxpayer, an individual. Appellate Tribunal made decision that order of the Commissioner is illegal stating that return filed by assesse cannot be further amended unless department possess definite information. Law permit for such amendment under sub-section 5 of Section 122 on the basis of definite information. Appellate Tribunal upheld that taxation officer failed to make out his case properly and amended the order u/s 122 without any definite information. Taxation Officer was not in possession of tangible information.

Decision Summary

Learned counsel for the applicant department submitted that provisions of Section 122(5) have not been read and relied upon completely. Proceedings under Section 122(5) could be initiated either in the basis of definite information or audit. In the given case proceedings were initiated after completion of audit and therefore definite information was not required. Learned counsel for the respondent argued on merits of the case submitting that appeal filed by the department against Commissioner Appeals decision was withdrawn therefore could not file reference application against the impugned order.

The Honorable Court stated that action under Section 122 was knocked down for a technical reason that definite information was not available. Merits of the case were not decided or discussed by the Appellate Tribunal therefore the arguments of respondent were set aside.

The Honorable court while presenting legal provision of Section 122(5), held that action under Section 122(1)(5) could be initiated on the basis of audit. The Court stated that the decision of Appellate Tribunal were based on ignorance of relevant provisions and set aside the impugned order.

Conclusion

The Court set aside the impugned order and stated that the appeal filed by the respondent taxpayer shall be deemed pending before the Appellate Tribunal and stated that the case shall be decided after providing opportunity of being heard to the parties on merits.

NOTIFICATION & CIRCULARS

KCO IMPORTANT ADVICE (Annual Income Tax Returns)

FBR has uploaded the annual tax return form on FBR web portal. Since the forms have been timely uploaded therefore it is highly unlikely that this time there will be extensions granted in filing of annual tax return date. Accordingly, it is advisable that all clients may kindly provide their data relevant to their tax returns at the earliest for timely filing of returns. Please note that heavy penalties may entail late filing of tax return therefore it is advisable to avoid last minute hassles and provide data as early as possible.

KCO IMPORTANT ADVICE (Exemption from Section 65F)

In view of the provisions of section 65F related to tax credit and section 154A relating to deduction of 1% tax on foreign remittances, it is advisable for all persons engaged in IT exports to file exemption application under section 159 to obtain exemption from the provisions of section 154A otherwise the banks are likely to deduct tax @ 1% from foreign remittances received by the IT companies from export of IT & IT enabled services."

COMPANIES (AMENDMENT) ACT 2021

The amendments have been made in Companies Act, 2017 vide Companies (Amendment) Act, 2021 which mainly relates to protection of minority investors, Ease of Doing Business in Pakistan, Introduction of an enabling regulatory framework to facilitate "Startups" for the promotion of business relating to innovation and technology and to improve overall business climate in the country and to remove other anomalies/ambiguities in the Companies Act, 2017. Most of these amendments were earlier promulgated through Companies (Amendment) Ordinance, 2020 in May 2020 which were lapsed after three months and now have been enacted through an Act of Parliament.

Link of Documents
KCO commentary. https://khilji.net.pk/wp-content/uploads/2021/06/Companies-Amendment-Act-2021.pdf
Original Act: https://khilji.net.pk/wp-content/uploads/2021/06/The-Companies-Amendment-Bill-2021.pdf

FBR Notification

FBR issued Notification ref: **730(1)12021 on June 11, 2021.**

Vide this SRO, FBR issued draft Income Tax Return Forms for Salaried Persons, AOPs, Business Individual and Companies for Tax Year 2021 for objection or suggestions thereon, if any, may for consideration of the Federal Board of Revenue be sent within seven days of publication of the draft in the official Gazette. Objections or suggestions, which may be received from any person in respect of the said draft, before the expiry of the aforesaid period, shall be considered by the Federal Board of Revenue.

Please click below to read the complete notification.
https://khilji.net.pk/wp-content/uploads/2021/06/20216111665657497SRO730.pdf

BUDGET 2021 DOCUMENTS

Finance Bill 2021: https://khilji.net.pk/wp-content/uploads/2021/06/Finance-Bill-Final-1.pdf

Notes on clauses: https://khilji.net.pk/wp-content/uploads/2021/06/Notes-on-Clauses-Final.pdf

Budget Speech https://khilji.net.pk/wp-content/uploads/2021/06/CamScanner-06-11-2021-16.25-1.pdf

FBR Notification

Federal Board of Revenue vide notification 801(I)/2021 dated June 24th, 2021, notified amendment in Income Tax Rules, 2002 as per following details.

INCOME TAX RULES 2002

Rule 13D Computation of capital gain or loss

Sub-rule (3) of Rule 13D is substituted to allow carry forward for capital losses arising on disposal of listed securities. Earlier Capital loss arising on disposal of securities in any tax year was not allowed carried to a subsequent tax year. After the change, capital loss arising on the disposal of listed securities in Tax Year 2019 and onwards that has not been set off against the gain of the person from disposal of listed securities chargeable to tax during the tax year shall be carried forward to subsequent year and can be set off only against gain from such listed securities and such loss can be carried forward to maximum three years immediately succeeding the tax year for which the loss was first determined.

Rule 13N Special procedures for computation of capital gains and collection of tax

Similarly, Sub-rule (7) of Rule 13N specifically provided that capital loss arising on disposal of listed securities in any financial year shall not be carried forward to a subsequent financial year. Now this sub-rule has also been substituted to provide that capital loss arising on the disposal of listed securities in 2019 and onwards that has not been set off against the gain of the person from disposal of listed securities chargeable to tax during the tax year shall be carried forward to subsequent year and can be set off only against gain from such listed securities and such loss can be carried forward to maximum three years.

Sub-rule (7A) is also added in Rule 13N which prescribes the manner for carrying forward of capital loss.

- It states that setting off of eligible capital loss carried forward from previous year shall be made by NCCPL only is respect of a taxpayer whose name appears in ATL list pertaining to the tax year to which such loss relates.
- Adjustment of carried forward losses shall be made by NCCPL on monthly basis on FIFO method from the first month of updation of ATL.
- NCCPL shall maintain tax year wise balance of unexpired carried forward capital losses separately identifiable for computation of limitation period for each tax year.
- Illustration is also provided in rules to demonstrate the manner of adjustment of capital loss carried forward from previous tax years.

Rule 13O. Statements and forms

Format of annual certificate of capital gains to be issued by NCCPL to taxpayer under rule 1(4) of the Eighth Schedule to the Ordinance is substituted. It now includes provision for capital loss and brought forward losses as well.

13P. Clarifications and explanations

In Rule 13P after clause (ze) a new clause (zf) has been added which shows an illustration for adjustment of capital loss to be carried forward.

Link of Document

Please click below to read the complete notification.

https://khilji.net.pk/wp-content/uploads/2021/06/20216241361642763SRO801Iof2021dated24.6.2021.pdf

SECP CIRCULAR

SECP vide Circular No. SCD/Circular/17/2021 dated June 11, 2021 has clarified that a Company can invest out of provident fund or any other employee contributory retirement fund in Exchange Traded Funds (ETF's) being the open-end collective investment scheme registered as notified entities with the Commission.

However, aggregate investment limits, sub-investment limits and the conditions for investment as provided in the Employees Contributory Funds (Investment in Listed Securities) Regulations, 2018, as explained below shall be ensured.

Limits for investment in Listed Securities
(As provided in the Employee Contributory Funds (Investment in Listed Securities) Regulations, 2018)

Regulation Reference	Description	Maximum limit *
3(1)(a)	Total investment in Debt CISs including Debt ETF	50%
3(1)(c)	Total investment in Equity CIS including Debt ETF	30%
3(8)	Total investment in debt CIS including Debt ETF managed by a single asset management company	50% of 3(1)(a)
3(9)	Total Investment in any single equity CIS including equity ETF	30% of 3(1)(c)

* As a percentage of the size of the Fund or trust, as the case may be at the time of making investment.

Conditions for investment in Listed Securities

Regulation Reference	Description	Conditions
4(c)	Investment in debt CIS including Debt ETF which have been assigned	"A" stability rating
4(f)	Total Investment in hybrid CIS including hybrid ETF	3 (1) (c)

Link of Document

Please click below the read the original circular.

https://khilji.net.pk/wp-content/uploads/2021/06/CIRCULAR-NO.-17-0F-2021Clarification-in-ivestment-in-unit-of-ETF-out-of-PE-or-any-other-EETF-out-of-providentor-other-employee-c.pdf

FBR Notification

FBR Issued Notification ref: S.R.0.12-C (1)/2021 on June 8, 2021.

Vide this notification, FBR has exempted sales tax in excess of five percent chargeable on supplies made by restaurants and eateries on account of takeaway subject to the conditions that no input tax shall be adjusted. This Notification shall remain in force upto June 30, 2021

Please click below to read the notification.

https://khilji.net.pk/wp-content/uploads/2021/06/2021681665623529sro725.pdf

KHILJI & CO RATE CARD 2021-22

Khilji & Co is proud of serving our valued and most respected clients in every possible professional way. We always strive to keep our clients well informed. As a regular annual practice, we have prepared our TAX RATE CARD FOR 2021-22**.**

This Rate Card is prepared on the basis of **Finance Act 2021.**

In addition to this the changes occurred due to Provincial Finance Acts are also mentioned in this Tax Rate Card.

Link of Document(s)

The Rate Card can be accessed at:

https://khilji.net.pk/wp-content/uploads/2021/07/Khilji-Co-RATE-CARD-2021-22.pdf

KHILJI & CO TAX BRIEFING FINANCE ACT 2021

Finance Act 2021 has been enacted on July 1, 2021. Khilji & Co will soon issue a detailed commentary on the same.

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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