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

KHILJI & CO.
Chartered Accountants

NEWSLETTER

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CASE LAW: 1

APPELLATE TRIBUNAL IR-I.T.A. NO. 190/KB/2017

BRIEF FACTS:

The case pertains to appeal filed by the taxpayer against the order passed by the learned Commissioner Inland Revenue (Appeals), as per which the various issues related to additions made in income under the impugned order passed u/s 122(5A) of the Income Tax Ordinance 2001, were either confirmed or remanded back by the learned CIR(A).

Aggrieved by the decisions of learned CIR(A), appellant filed appeal with honorable ATIR seeking relief on the following issues:

1. Receipts from State Life Insurance Corporation of Pakistan on maturity of life insurance policy not to be constituted as taxable income of the appellant as envisaged u/s 9 of the Ordinance nor it falls under any of the heads of income as mentioned u/s 11 of the Ordinance.

2. The gifts received from blood relatives, including from brother in cash is received as per the requirements of section 39(3) of the Ordinance; and

3. Two amounts of Rs. 850,400/- and Rs.421,579/- which were income from property and covered under FTR respectively added back to the income of the appellant without show cause, hence, illegal and void ab initio.

TAXPAYER PLEA

Against each of the issue raised on the forum of honorable ATIR, legal counsel representing appellant, pleaded as follows:

1. On the issue of receipts from State Life Insurance Corporation of Pakistan, learned AR contended that maturity of life insurance policy was not taxable income of the taxpayer as treated by the ADCIR u/s 9 nor under any head of the income as mentioned in the Section 11 of the Ordinance. Learned AR further contested that a person cannot be taxed unless he comes within the letter of law.

2. On the matter of cash received, learned AR submitted that donors are NTN holders and blood relatives of the appellant, while all the payments were made through cross cheques in the name of the appellant, except one for Rs. 1,000,000 given by the brother in the form of cash. To support the arguments, copies of cheques, bank statements of the donors and donee, bank deposit slips and an affidavit given by the brother who gifted cash were also submitted for scrutiny, but not duly considered.

3. On the last issue of two amounts two amounts of Rs. 850,400/- and Rs.421,579/- which were income from property and covered under FTR respectively had been added back to the income of the appellant, against which learned AR argued that additions were made without serving show cause, hence, both the additions are palpably illegal and void ab initio.

DECISION SUMMARY

Honorable ATIR gave thorough consideration to the arguments raised by the learned counsels from both sides, and after much sought deliberation accepted the appeal filed by the taxpayer on the following grounds:

1. On the first issue of treating maturity of life insurance policy and treating it as income while making additions in the amended assessment order, honorable ATIR declared that, for the purpose of the imposition of tax and the computation of total income, an income shall need to be classified under heads, as defined under section 11 of the Ordinance, namely, salary, income from property, income from business, capital gains and income from other sources, defined in sections 12, 15, 18, 37 and 39 respectively. If the income cannot be classified under any of these five heads, then such income could not be taxed. The honorable ATIR further noted that learned ADCIR has treated receipt of payment from State Life Insurance on maturity of life insurance policy as income from other sources and although, there is a long list of incomes from other sources defined in section 39 of the Ordinance such as dividend, royalties, profit on debt etc. receipts on account of maturity of insurance policy is not included in the list mentioned therein. Therefore, honorable ATIR concluded that the learned ADCIR was not justified to treat such receipts as income from other sources, by declaring addition of Rs. 1,137,640/- being illegal and unfounded.

2. On the matter of cash received having treated as income, honorable ATIR declared that the relevant documents such as copies of cheques, bank statements of the donor and donee and bank deposit were found to be in compliance with sub section 3 of section 39 of the Ordinance. On the issue of amount of Rs. 1,000,000/- received in cash, honorable ATIR agreed with the contention of appellant AR, in following wordings:

   Quote- "9……..*The learned AR argued and we are in agreement with him that in our society it is a common practice between family members especially who are living under single roof to give each other cash gifts and the concept of oral gifts is duly recognized in our legal system. The A.R. relied upon a decision of a larger bench of this Honorable Tribunal who has resolved this controversy in I.T.A. No. 2133/LB of 2003 reported in 2008 PTD 19. In that case a wife received cash gift from her husband and section 12(18) of the Income Tax Ordinance, 1979 was under scrutiny which is conceptually similar to section 39(3) of the Income Tax Ordinance, 2001."* Unquote. *emphasis supplied.*

   The honorable ATIR on this matter further declared that in view of the binding decisions of the Honorable! High Court and the larger bench of this Tribunal, gifts received under consideration were genuine and made to the appellant from known sources by the donors, therefore, ordered to delete the addition of Rs.8,830,000/-.

3. Lastly on the issue needing adjudication pertaining to the two amounts of Rs. 850,400/- and Rs. 421,579/- issuance of show cause notice, honorable ATIR held that it is a settled law that any order of adjudication passed on a ground which was not mentioned in the show cause notice is palpably illegal and void on the face of it. Hence, declared CIR(A) was not justified to remand back the issues to assessing officer in a cursory manner, when such a fatal illegality was apparent from the record. Therefore, affirmed that the impugned order of the Additional Commissioner is annulled on this score.

CASE LAW: 2

SINDH HIGH COURT C.P. No. D-8101 of 2017, FORUM:

BRIEF FACTS:

The case in hands involves resolution of the issue related to unilateral suspension and blacklisting of sales tax registered taxpayers, by the Federal Board of Revenue (department), before issuing any show cause notice, without giving any opportunity of being heard or even confronting registered taxpayer with any adverse material.

ARGUMENTS FRAMED BY THE APPELLANT

At the forefront, honorable Court's attention was drawn by the learned counsel appearing on behalf of the petitioners towards the applicability of Section 21 of the Sales Tax Act, 1990 as well as towards Rule 12 of the Sales Tax Rules, 2006 by arguing that the said scheme of law/regulation in the present from is in violation of the fundamental principle of fair trial under Article 10-A of the Constitution, thus repugnant to the principles of natural justice, hence ultra vires to the Constitution on the one hand, whereas, on practical footing, a hanging sword on the petitioners whose business come to an abrupt halt by such whimsical acts of the respondents hampering the principle of freedom of doing trade, business and profession as enshrined under Article 18 of the Constitution.

It was thus prayed by the appellant learned AR, that the relevant provision of Rule 12 are ought to be declared ultra vires to the Constitution.

DELIBERATION OF VARIOUS IMPORTANT ISSUES

The honorable High Court paid particular attention to the scope of section 21, which provides only two grounds to blacklist or suspend one's registration i.e. for issuance of fake invoices or committing a tax fraud and whether the host of other conditions mentioned in Rule 12 can be applied based on which ones sales tax registration can be blacklisted or suspended. Further deliberation were made with respect to the language of section 21, in terms of word "satisfied: and "committed" and if Rule 12 conferred unbridled and unfettered powers to the concerned Commissioner to suspend registration of a taxpayer without notice and without affording opportunity of

hearing, and that the term "satisfaction" must be subject to preliminary inquiry and perusal of record so as to enable a person to upend the "satisfaction" already arrived by the Commissioner.

Each and every key issue thoroughly considered and discussed by the honorable High Court in order to arrive at meaningful and just settlement of the matter is as under:

i. Scope of Section 21

The honorable High Court were of the clear view that while section 21 provides only two grounds to blacklist or suspend one's registration, i.e. if one has issued fake invoices and other if, taxpayer has otherwise committed tax fraud, host of other conditions added in Rule 12 can only be considered as engineered elasticity of Rule 12, which clearly exceeds the scope and endurance limits of section 21(2) to the disadvantage of a registered sales tax payer. In such circumstances where rules have over-stretched powers granted by the parent statute, Courts have come to the rescue of the affectees.

ii. Meaning of word and language "Satisfaction" and "Committed"

With regards to the language of section 21(2), in context of the word "satisfied", honorable High Court held that being satisfied would mean Commissioner coming to a conclusion on the basis of material sufficient to prove that the registered person had issued fake invoices or has otherwise committed tax fraud, which in legal sense 'satisfaction' could only be reached when judicial determination has been completed by placing sufficient facts before the authority concerned from both the sides. Thus, to be satisfied, the Commissioner ought not to have only one-sided indulgence, rather must give full opportunity to the other side for hearing latter's point of view before finds himself convinced beyond a reasonable doubt and exercises power granted under this section.

On the word "committed", honorable High Court were of the view that section 21 prescribes punishment of suspending and/or blacklisting a tax payer's registration, hence the word 'committed' must be construed accordingly. Therefore, in order to arrive at the conclusion that either the fake invoices have been issued or tax fraud has been committed, fair trial process as enshrined in Article 10-A of the Constitution is to be followed, the concept of which would not exist without giving an opportunity of being heard.

iii. Validity of Rule 12(a)(i)

In order to determine whether the Commissioner having jurisdiction is satisfied that a registered person has issued fake invoices, evaded tax or committed tax fraud, therefore, registration of such person may be suspended by the Commissioner through the system, without prior notice, honorable High Court examined recent judgment rendered by a divisional bench of Lahore High Court in the case of Commissioner Inland Revenue v. Imran Ali Lubricants (2019 PTD 1213 Lahore) and single Bench of this Court in the case of Inbox Business Technologies Ltd, v. Pakistan (2018 PTD 621). In both the referred judgments, honorable Courts were of the considered view that Rule 12 conferred unbridled and unfettered powers to the concerned Commissioner to suspend registration of a taxpayer without notice and affording opportunity of hearing, and that the term "satisfaction" must be subject to preliminary inquiry and perusal of record, whereby drastic action of suspension/black listing of STRN could only be issued where the Commissioner had solid and tangible.

DECISIONS SUMMARY

By noting the above observation, honorable High Court allowed the petitions by declaring that following:

1. The authority to the Commissioner to suspend the sales tax registration of a registered person "without prior notice", is ultra vires to the Constitution, violative of principles of natural justice and in excess of authority vested under Section 21(2) of the Sales Tax Act, 1990;

2. All the orders of suspension of Sales Tax Registration issued to the petitioners in violation of express provisions of Section 21(2), which requires the satisfaction of the Commissioner are only to be made where a registered person is found to have issued fake invoice, or has otherwise committed tax fraud. Therefore, without confronting the registered person with such reasons in writing, actions of the

Commissioner were declared to be without lawful authority and of no legal effect; and

3. All the order(s) of suspension of sales tax registration wherein, show cause notice(s) under section 21(2) has not been issued within seven days therefrom, and/or no order of blacklisting has been passed within ninety days of issuance of the notice of hearing, the suspension of sales tax registration was declared void- ab-initio, accordingly such sales tax registration stood restored.

CASE LAW: 3

SINDH HIGH COURT CP: D-4651,

BRIEF FACTS:

The case in hand involves adjudication of core controversy on common petitions being that, whether the petitioners are entitled to claim input adjustment in respect of the taxable supplies or services received by them from the unregistered persons.

As per the brief background of the common petitions heard by the honorable Sindh High Course, petitioners are limited companies engaged in different business and are having proper sales tax registration number. However, despite petitioners being liable to withholding sale tax on services at the applicable rates in respect of the value of taxable service provided to them, in case the said services were provided by unregistered persons, input tax of such sale is not allowed to the petitioners while e-filing the sales tax returns, which according to them is unconstitutional and without jurisdiction and that they should not suffer on account of complacency / shortcoming on part of unregistered person

Therefore, prayed for petitions may be accepted by allowing the input adjustment of the deductions made by those unregistered persons and to declare the procedure of withholding tax, as provided under Sindh Sales Tax Rules, 2011, Sindh Sales Tax Special Procedure (Withholding) Rules, 2011 and 2014 to be illegal, unconstitutional and without jurisdiction.

DECISION SUMMARY

The honorable Sindh High Court after hearing arguments from both sides and considering the applicable provisions of Sindh Sales Tax on Service Act, 2011 Sindh Sales Tax Rules, 2011 and Sindh Sales Tax Special Procedure (Withholding) Rules, 2011 accepted the contention set forth by the legal counsel representing appellant petitioners. Honorable Sindh High Court declared that the petitioners are entitled to claim input adjustment in respect of the taxable services provided to them by unregistered persons, while also directing Sindh Revenue Board to make necessary amendment /provision in the e- return to enable the persons filing their returns via e-filing to claim the input tax adjustment from unregistered persons also and till such time the petitioners may be allowed to file their returns manually in order to avoid any confusion created in this behalf.

Honorable Sindh High Court made following notable observations, while agreeing with the petitioners' plea:

Quote "12. From the perusal of the above law it may be noted that the law does not bar obtaining of the taxable services from an unregistered persons, however the only impediment which finds place in the law is with regard to the person who otherwise is liable to be registered but not registered would be considered as an unregistered person and a penalty has been provided under Section 43 of the Act, 2011 for the act of non-registration. in the instant matter, *it may be noted that the learned counsel appearing for the respondents have not pointed out even a single provision of law whereby it has been provided that no input tax adjustment would be available on the taxable services obtained by a withholding agent or a registered person from an unregistered person though it has been pleaded by the learned counsel for the petitioners that e-return does not accept the same but from the law explained before us by the learned counsel for the respondents it may be noted that no provision of law is cited through which input adjustment could be denied to a withholding agent obtaining taxable services from an unregistered person*; rather the proviso to Section 3(4) of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014, mentioned above, clearly stipulates that withholding agent, who receives taxable services from an unregistered person, is responsible to obtain and keep in record a copy of the CNIC of the unregistered service provider, if he is an individual and a copy of the

NTN certificate of the said unregistered person if he is an AOP or a company.

13. ***The reading of the above proviso clearly indicates that taxable services could be obtained from an unregistered person and the withholding agent is only required to obtain a copy of CNIC of the said unregistered person, if he is an individual but if it is a company or NTN holder, a copy of the NTN certificate, meaning thereby there is no restriction for obtaining taxable services from an unregistered person and the only responsibility assigned to a person obtaining taxable services from an unregistered person is with regard to obtaining CNIC (in the case of an individual) and NTN certificate (in the case of a company). Thus when the law does not put a bar upon taxable services from an unregistered person, there cannot be any bar on claiming input adjustment in respect of the taxable services obtained from the unregistered person also, as the learned counsel appearing for the department (respondents), as stated above, have failed to point out any provision of the law which specifically bars denial of the input adjustment in respect of the taxable services obtained by a person, being withholding agent, from an unregistered person but the only requirement is with regard to obtaining a copy of CNIC or NTN certificate, as the case may be. The above provisions of law also clearly stipulate entering the name, CNIC and NTN of the unregistered persons in the sales tax form which also supports the contention of the petitioners that even if they have obtained taxable services from the unregistered persons, they are entitled for input adjustment and since the form so designed by the department / respondents is not accepting and recognizing unregistered persons for input adjustment, there appears to be a defect in the said form which needs to be corrected."*** **Unquote.** ***emphasis supplied***.

CASE LAW: 4

SINDH HIGH COURT
SPECIAL SALES TAX REFERENCE APP NO. 02 OF 2017

BRIEF FACTS:

The case, needed adjudication on the following three questions of law arising from the decision by the Appellate Tribunal having maintained the earlier decisions by departmental authorities:

1. Whether the learned Appellate Tribunal erred in holding that the appellant (applicant) is engaged in the provision of "Business support services?

2. Whether the learned Appellate Tribunal was justified in taxing the entire value of the appellant's (applicant's) invoices even though only one component of such invoice related to fee for provision of services. i.e. if activities are to be classified as "Business Support Services", the revenue component that constitute value of service provided or rendered has to be clear and other component, which does not constitute value of service should be disintegrated under Sindh Sales Tax on Services Act, 2011 thus not liable to be taxed under the Act, 2011?

3. Whether the learned Appellate Tribunal gravely erred in deciding that the appellant (applicant) would be liable to pay default surcharge and penalty if the principal amount was not paid expeditiously despite having held that the key element of mens rea was missing and that there was a contest between the parties in respect of classification of services?

As per brief background, taxpayer (appellant), is engaged in collection and coding of data relating to the pharmaceutical industry and its transmission to overseas IMS offices and coordination between IMS-AG Switzerland and its customers in Pakistan, governed and undertaken by the applicant through an agreement. The agreement, which is not disputed, provided that principal (IMS-AG) is engaged in collection of data, statistics and information of all kinds for preparing publications and selling market research reports and the primary object, in connection therewith of the applicant, was not only to collect data, rather marketing research reports and its publication.

On this account, appellant, was of the view that the services which are been rendered by the taxpayer are to be classified under "Data Processing Provision of Information", whereas department was of the contention that these were instead, "Business Support Services", as these pertain to the services provided or rendered by persons authorized to transact business on behalf of others.

Appellate Tribunal also classified the services as "Business Support Services", and was of the view that the invoices generated on the amount includes the expenses/expenditures plus 10% service charges and is to be taken as one revenue component for services rendered. The Tribunal was also of the view that in certain cases there is specific rule in Sindh Sales Tax on Services Act, 2011 providing for valuation of a particular service and providing a certain minimum threshold and also any exemption and exception. However, since no rule is available for the category of "Business Support Services", full value of generated invoices shall be taken as the value of services rendered or provided in terms of provisions of Section 5 ibid.

DECISION SUMMARY

1. On the issue of classification of services under the relevant tariff heading, honorable Sindh High Court were of the view that as per the agreement for services, activities undertaken by the appellant pertains to support business transactions, thus preferred not to upset the findings of the department as far as applicability of tariff heading is concerned.

2. While deciding on the issue, whether that Appellate Tribunal and department was justified in taxing the entire value of the services taxable under tariff heading, "Business Support Services", thorough consideration was paid to the section 3, 5 and 8 of Act, 2011 by the honorable High Court. However, honorable Court did not agree with the observation of Appellate Tribunal by stating that, as section 5 itself is clear that it is for the value of the service which is taxable, the reimbursed part of the invoice may or may not be of the goods which have been separately subjected to tax, thus the provincial Act itself would then not come into play for the entire invoice. Honorable High Court further stated that department has absolutely not disputed about the value of the service rendered, as it is their view that even the reimbursed part of invoice is liable to be taxed and hence the value of service has not been disputed.

   Honorable Sindh High Court further held that section 8 also limits the applicability to the extent of its charge, levy and collection which is restricted to the value of taxable service. Thus, the collective reading of section 3, 5 and 8 make us to arrive at an irresistible conclusion that it is only the value of service rendered and provided that could be subjected to Act, 2011 and not any other components therein as this would invade the jurisdiction of other statutes as the invoice could contain a component of an amount likely to be reimbursed which amount either has already been subjected to a treatment on the basis of other applicable laws, or otherwise.

3. On the last issue to held appellant liable to pay default surcharge and penalty, honorable Sindh High Court held that since proceedings throughout were contested on lawful grounds and there is no element of willful and deliberate negligence, no element of willful evasion of such taxes arises. However, since the tax is to be recovered on the basis of value of the service, the amount be deposited in 30 days' time and only on failure thereof the penalty and surcharge shall then be liable to be paid and recovered.

In view of above facts and circumstances, honorable ATIR concluded the matter by declaring that the department has misapplied the provisions of Section 5 of Sindh Sales Tax on Services Act, 2011 by including reimbursed and other components of the invoice in charging tax on the value of services rendered by the applicant. However, acknowledged that the department has validly considered that the appellant falls under tariff heading for, "Business Support Services", hence the rate specified in the third column of the Second Schedule at the relevant time is recoverable on the value of the services rendered. However, since the tax is to be recovered on the basis value of the service, the amount be deposited in 30 days' time and only on failure thereof the penalty and surcharge shall then be liable to be paid and recovered from the appellant.

CASE LAW: 5

ITA (Interim) No. 5734/LB/2021
MA (Stay) Interim No. 11754/LB/2021

Brief Facts:
Brief fact of the case is that the Commissioner Inland Revenue Appeal refused to entertain further extension of stay application with argument that he has possessed the power to grant a stay for a maximum period of 60 days which has already been granted. Being aggrieved the appellant filed appeal before the Tribunal against the said order with the argument that the Tribunal vide its order 1713/IB/2021 dated 01/11/2021 in which the Tribunal

directed that when the delay in the disposal of appeal is not attributable to the tax payer, the CIR (A) can extend the stay already granted beyond the period of 60 days. The appellant second its argument in the light of circular issued by FBR dated 10/11/2021 in which FBR directed all CIR (A) to strictly follow the order of Tribunal in respect of grant of further stay beyond the period 60 days.

Decision summary

The Honorable Tribunal held that the perusal of the impugned order shows that the CIR (A) has given its own finding being ignoring the judgment of this Tribunal and the letter issued by FBR. The Tribunal further ruled out that CIR (A) is bound to obey the law declared by this Tribunal unless and until it is not reversed or suspended by the superior court. The Tribunal point out several decision of different superior courts in respects of that the lower court is bound to follow the Orders of superior Court as the Federal Board of Revenue also on its letter ref no C.no1 (7)DT-14/92 dated 10th February 1992 with subject "Orders of Tribunal Binding on Tax Officials" directed all tax Officials that the order of this tribunal is binding on the subordinate Income Tax authorities and, therefore, we deprecate the manner in which the Commissioner of Income Tax (Appeal) has side – tracked the order of this Tribunal, we disapproved such practice on the part of subordinate Income Tax Authorities and expect that in future the orders passed by this Tribunal shall be properly respected and followed".

Conclusion:

The Honorable Tribunal concluded the appeal and directed the CIR (A) to decide the main appeal of the appellant on its own merit preferably within 60 days from the receipts of this order after providing the proper opportunity of being heard to the appellant and to pass a speaking order in accordance with law. Meanwhile, the department is also directed not to take any coercive action against the disputed tax liability till the decision on Appeal by the CIR (A).

CASE LAW: 6

REFERENCE/CITATION:
ITA NO.771/772/IB/2013

Brief Facts:

Brief facts of the case are that the appellant Capital Development Authority are engaged in auction of Commercial Immoveable Property. A notice was received by the Appellant from Deputy Commissioner Inland Revenue (DCIR) that tax under section 236-A of the Income Ordinance 2001 becomes due at the time of auctions. The appellant argued against the notice that taxes are deducted on payments and collected on receipts, therefore, the DCIR was not justified to treat Capital Development Authority as assessee in default for non-collection when payments has not been received. Capital Development Authority since 2009 is collecting tax with installments and accepted by the departments, recovery now at the time of auction constitutes changes of opinion. The section specifies "Sale by Auction "therefore, tax is to be collected at the time of sale when in accordance with laws of Pakistan sales is concluded. Ownership letters are issued to bidders on completion of payments and possession is also handed over on completion of payment. Therefore, sale is concluded on receipt of full consideration, and recovery at any time before such date is against the law. The same was argued before Commissioner Inland Revenue (Appeals-I) but failed hence ultimately it filed appeal before the Appellate Tribunal.

Decision summary

The Honorable Tribunal held that section 236A does not state that the advance is to be collected with each installment to be paid but at the same time it is also not mentioned in the section 236A of the Ordinance, 2001 that the advance tax is to be collected and paid at the time on the day of auction. The Tribunal is of the considered opinion that as per the scheme of the Ordinance, 2001 for the withholding and collection of advance tax the same would be done at the time of actual payment made or received as the case may be. We do not find any provision in section 236A whereby the authority / person receiving the payment will mandatorily be required to collect tax at the time of auction if the auction is made on installment basis. We have also gone through the letter of clarification issued by the FBR vide C. No. 4(23)IT-Budget/2020 dated 25.02.2020 reproduced as under:

"I am directed to refer to your letter No. CDA/FW/C-1/2020/1047 dated 18.02.2020 and to state that a person making sale of public auction or auction by tender of any immovable property is required to collect tax under section 236A of the Income Tax Ordinance, 2001 computed as per rate specified in Division VIII of Part VI of First Schedule on the basis of sale price of the

immovable property at the time of sale. In instances where payment is received in installments before completion of sale as envisaged in section 54 of the Transfer of Property Act, 1882, the withholding agent shall collect tax by apply the applicable rate on each installment. However, it may be ensured that in no case shall the title / possession of the immovable property be transferred to the purchaser before full payment of tax computed under section 236A".
From the perusal of the said clarification letter, it is clear that withholding agent/collecting agent is required to collect the tax as per the rate applicable on each installment the corollary of which leads to the conclusion that the advance tax is to be collected and paid on each installment.

The Tribunal observed that now the question is arising whether this explanation can be given retrospectively effect or not?

The Tribunal answer this that any explanation clarificatory and directory in nature can be given retrospective effect not only this but to our mind such explanation is deemed to have always been a part of the section to which it is added since the time of insertion of the section. To second their observation the Tribunal got guidance from the Supreme Court of Pakistan who held that that an Act of Parliament made to correct an error by omission in a former statute of the same session, has relation back to the time when the first Act was passed. Even when mistakes in legislative enactments are corrected by a later amending Act, the amending Act should be read as part of the Act which it was intended to correct. Though the Act is not called a declaratory or explanatory Act if from the words used in the Act the Court can come to the conclusion that it is a declaratory or an explanatory Act retrospective effect will be given to such Act." The Tribunal also noted that while adding the explanation the Legislature has used the words "for the removal of doubt" which unequivocally demonstrates that there was a doubt regarding application of section 236A qua collection of advance tax in case of auction made on installments which has, now, been clarified by inserting the explanation in this very section. It is also a trite law that where there is a doubt in interpretation of any statutory provision the same is to be resolved in favor of taxpayer/assessee as is held by the Honorable Lahore High Court in a judgment reported as Messrs Rijaz (Pvt.) Limited v. The Wealth Tax Officer Circle III, Lahore (1996 PTD 489) in the following words.

"According to the well-accepted principles of interpretation the doubt has to be resolved in favour of the citizen. In these circumstances, the law makers could clarify its intention by adding an explanation which cannot be legitimately object to". The Tribunal further observed that the provision of section 236A as stood in the year 2013 was silent on how to collect advance tax in the case of receipt of payment in installments, it is therefore the explanation has been added by the legislature to remove the doubt and to clarify that in the case of auction of property / goods on installments the advance tax will be collected with each installment. The Tribunal further state that the honorable higher judicial forum of the country has candidly established that any beneficial and remedial amendment in a law / statute may be given retrospective effect. The explanation (b) added to the subsection (1) of section 236A is not only explanatory and clarificatory / directory in nature but is also a remedial / beneficial amendment because before the insertion of explanation there was no clarity as-how to collect advance tax for the goods / properties auctioned in installments and through explanation it has been facilitated to collect advance tax with each installment. Therefore, the Tribunal

Conclusion:
The Honorable Tribunal concluded that where the payment is received in installments against the auctioned goods / properties the advance tax is to be collected with each installment at the applicable rate of tax at the time of payment of installment. It is, however, clarified that the tax department should make sure that the appellant / taxpayer had collected advance tax with each installment and then deposited the same to government exchequer.

CASE LAW: 7

Supreme Court of Pakistan
Civil Petition No. 2256-L of 2015

Brief Facts:

Brief fact of the case are that the assessees filed returns for the assessment years involved, being 1993-94 and 1994-95 for Nishat Mills and 1999-2000 for Muslim Insurance. Assessments were framed by the concerned Deputy Commissioner of Income Tax (for convenience referred to as the "ITO") under section 62. Thereafter, in each case the concerned Inspecting Additional Commissioner ("IAC") sought to revise the assessments under section 66-A on the ground that the same were erroneous and prejudicial to the interests of the revenue. The orders so

made were challenged before the Appellate Tribunal where the assessees met with success. The department thereafter filed tax references, which were taken up together and decided by means of the impugned judgment. The only point of challenge relevant for present purposes was that according to the petitioners the ITOs while framing the assessments made those orders with the approval and in consultation with the concerned IACs. It was contended that the IACs could not, having participated in the making of the orders, thereafter turn around and seek to revise those very same orders under section 66-A. This contention was accepted by the learned Tribunal, and it set aside the orders of the IACs. The Department then filed appeal before Honorable High Court against the order of the Tribunal where the High court decided the reference case in favor of the Tax department. Being aggrieved the Appellant filed appeal before Supreme court.

Decision summary

The analysis of High Court is correct only to a certain extent. As we indicate below the learned High Court, with respect, did not fully understand and apply the statutory provisions in their correct perspective. In particular, the learned Division Bench failed to appreciate that the aforesaid provisions could, depending on the facts and circumstances of the case, result in two distinct types of outcome, one being a matter of law and the other being one of fact.

We begin with what can be regarded as the general provision, section 7 and its counterparts. It is to be noted that section 7 and section 213 of the 2001 Ordinance are cast in virtually identical terms. Now, in any organization (including a Government department) it is only to be expected that there will be, in the ordinary course and as part of the normal routine, an ongoing consultation and interaction among persons holding different posts in the hierarchy. It is something that can be usefully and productively drawn upon, as and when needed.

The learned High Court has correctly characterized the scope and intent of these provisions as being concerned with "administrative instruction"] meant for [the] internal consumption of the department". The sections are, in our view, neither enabling nor permissive in the technical sense but rather more akin to an explanation (i.e., meant for the avoidance or resolution of any doubt). The contrast between them and section 5(7B) of the 1922 Act may be noted.

We now come to the provisions specifically relating to assessments, section 23(7) of the 1922 Act and section 62(2) of the 1979 Ordinance. Although the two may superficially appear to have served the same purpose, a closer look reveals important differences, which are a key to resolving the issue before us.

Firstly, section 23(7) used the very phrase that was missing in section 5(7B): "assisted, guided or instructed".

Secondly, these words were used in relation to the generality of the departmental hierarchy: "an authority mentioned in section 5 or by one or more nominees of the Central Board of Revenue".

In court view, section 23(7) gave recognition, in the specific context of the making of an assessment, to those general processes of consultation, communication and interaction that were given much broader expression in the successor legislation.

In contrast, the position under section 62(2) was different. It was cast in entirely different terms. Firstly, it required that the officer or other nominated person, as mentioned in section 7, had to be authorized by the Central Board of Revenue ("Board") to assist the ITO in making an assessment. It then provided that if the ITO disagreed with the officer so assisting on any point he had to expressly set out the opinion of the latter in the assessment order and his reasons for disagreeing with the same. Now, both section 23 and section 62 cast a statutory duty on the ITO to frame the assessment and make the necessary order. In this court point of view the officer, if any, authorized by the Board under section 62(2) was also under a statutory duty, albeit of a more limited nature, namely, to assist the ITO in the making of that assessment. Such provision would make sense only if, as a matter of law, the duty of assistance was of the same nature as the duty of making the assessment order itself. If the assistance had been intended to be only of an informal or general nature which could simply be ignored by the ITO the language of subsection (2) would have been materially different. Of course even on the language as used the ITO's view ultimately prevailed. But the manner in which the subsection was structured shows that the assisting officer was also under a statutory duty. Both had to separately apply their minds to the case. If the outcome was concurrence the assessment order followed accordingly.

The crucial point is that on its true construction subsection (2) required the assisting officer, as a matter of law, to

apply his mind to the case. In our view, it also followed that if section 62(2) applied in the facts and circumstances of the case an irrebuttable presumption of law was raised. Since the subsection required the assisting officer, as a statutory duty, to apply his mind to the case it did not matter whether he had in fact done so and if so to what degree. The assisting officer was the IAC concerned it would be sufficient, to preclude any exercise of powers under section 66-A, to show simply that he had been authorized by the Board under the subsection in respect of the case.

We turn to the other possible outcome, which would have been a matter of fact. Even if section 62(2) did not apply in the facts and circumstances of the case it could still have been that the ITO took assistance, guidance or instruction from a superior officer in terms of section 7. However, now it would be a question of fact whether any officer had been so involved. An affirmative finding would not in itself have been sufficient to preclude the IAC from invoking section 66-A in relation to that particular case. As a matter of fact, that the degree of involvement was of such intensity that it would make subsequent recourse to section 66-A impermissible.

Foregoing analysis and discussion to the facts and circumstances before us. On a specific query from the Court none of the learned counsel could confirm whether any officer, and especially the IACs concerned, had been specifically authorized by the Board in terms of section 62(2). Thus, the first requirement for that subsection, and the legal consequences emanating from it, to apply did not exist. The first possible outcome, which would have been a matter of law and raised an irrebuttable legal presumption, did not therefore exist. That leaves only the second possible outcome. This was a matter of fact. Now, the learned Tribunal did find that there had been consultation with, and the approval of, not only the IAC but also the Commissioner of Income Tax (CIT). However, even if we put aside the (important and material) submission by learned counsel for the department that in the case of Muslim Insurance the IAC consulted and the one who acted under section 66-A were different, any conclusions based on the finding of fact recorded by the Tribunal was deficient and erroneous. This is so because, as observed above, the mere fact of consultation or even approval was not enough. The degree and intensity of the consultation (itself a question of fact) had also to be established and shown to have been of such level that it would preclude the subsequent exercise of powers under section 66-A. In our view, the learned Tribunal misdirected itself in law by considering that it sufficed simply, and only, to show that the IAC had been consulted. This misunderstanding and misapplication of the statutory provisions led it into legal error. The conclusion arrived at was not sustainable.

Conclusion:

The Honorable Supreme court dismiss the appeal and upheld the order of the High court and ruled out that Inspecting Additional Commissioner on the instruction of his concerned superior/senior officer can revised the assessments under section 66-A on the ground that the same were erroneous and prejudicial to the interests of the revenue.

NOTIFICATIONS / CIRCULARS

FBR NOTIFICATION

Federal Board of Revenue issued S.R.O 128 (I)/2022 dated January 25, 2022.

Through the aforementioned SRO FBR has issued following amendments the ***Federal Board of Revenue Anti-Money Laundering and Countering Financing of Terrorism Regulations for DNFBPs 2020***:

Following new sub-regulations (4) and (5) shall be added after sub-regulation (3):
"(4) Every DNFBP shall ensure that it has measures in place to prevent any person who has been convicted of a criminal offence or any associate of such a person from—

a) Holding any ownership or controlling interest in the DNFBP;
b) Being the beneficial owner(s) of the DNFBP; and
c) Holding any senior management or board position in the DNFBP.

(5) Every DNFBP shall notify the FBR when there is a change in

a) Any ownership or controlling interest in the DNFBP;
b) Any beneficial owner(s) of the DNFBP; and
c) Any senior management or board position in the DNFBP."

Please click below to read the original notification
https://khilji.net.pk/wp-content/uploads/2022/01/20221251215928377SRO128Iof2022dated25.1.2022.pdf

KCO COMMENTARY AMENDMENTS IN COMPANIES ACT, 2017

Please click on link given below to read the complete commentary on Companies (Amendment) Act, 2021.

This act shall come into force at once.

https://khilji.net.pk/wp-content/uploads/2021/12/Companies-Amendment-Act-Dec-2021.pdf

KHILJI & CO -- TAX BRIEFING -FINANCE (SUPPLEMENTARY) ACT, 2021
Please click on link mentioned below to access and study the complete document

https://khilji.net.pk/wp-content/uploads/2022/01/KCO-Tax-Briefing-Finance-Supplementary-Act-2021-1.pdf

ORIGINAL ACT CAN BE ACCESSED AT FOLLOWING:

https://download1.fbr.gov.pk/Docs/20221171715518644TheFinanace(Supplementary)Act,2022.pdf

We humbly request our valued clients and 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

Sindh Revenue Board Input Tax Against Utility Invoices (STRIVe - Sales Tax Realtime Invoice Verification)

Sindh Revenue Board has informed taxpayers following regarding STRIVe (Sales Tax Realtime Invoice Verification). We are pleased to circulate for the knowledge and record of our valued clients.

Quote "STRIVe (Sales Tax Realtime Invoice Verification) System has been implemented for Sindh Sales Tax return filing since July, 2019. However, keeping in view taxpayers' demand, the System was not made applicable to the invoices issued by utility companies such as electricity / gas distribution companies and telephone / telecom companies. Since, considerable time has elapsed and other tax administrations such as FBR and other provincial sales tax authorities have long ago implemented STRIVe for utility invoices, SRB has decided to discontinue the practice of allowing input tax adjustment against manual entry of utility invoices.

Accordingly, it is intimated that starting from Sindh sales tax returns for the tax period February, 2022, to be filed in March 2022, the input tax against utility invoices (i.e. electricity, gas and phone / telecom services) shall only be allowed if the supplier / utility company has declared such supplies / services specifically in the name of Sindh registered person in the respective monthly tax returns submitted with Federal Board of Revenue.

It is added that the input tax deduction / adjustment, so availed, shall be subject to admissibility criteria as laid down in or under the Sindh Sales Tax on Services Act, 2011***"Unquote***

FBR Circulars

Federal Board of Revenue has issued Circulars, 06, 07 and 12 of 2022 on January 16, 2022.

Through these circulars, FBR has issued explanations of significant amendments in the ICT (Tax or Services) Act 2001, Federal Excise Act 2005, Sales Tax Act 1990 and Income Tax Ordinance 2001 respectively, brought about through Finance (Supplementary) Act 2022.

Please click below to read the original documents

Circular 6:
https://khilji.net.pk/wp-content/uploads/2022/01/20221201315721697EXPLANATORYCIRCULARNO.6OF2022DATED20.01.2022-STFEDANDICTTAXONSERVICESORDINANCE2001.pdf

Circular 7:
https://khilji.net.pk/wp-content/uploads/2022/01/20221201515050353CircularNo.07of2022SalesTax.pdf

Circular 12:
https://khilji.net.pk/wp-content/uploads/2022/01/20221201711831812circularno12of2022incometax2.pdf

FBR Information
(Extension in Date of Submission of Annex-C, Payment and Filing of Sales Tax and Federal Excise Return for the Tax Period of December)

Federal Board of Revenue has issued extension in the dates of submission of Annex-C, Payment and Submission of **Sales Tax and Federal Excise Returns** for the Tax Period **DECEMBER 2021.**

1. The date of submission of Annex-C of Sales Tax & FED, which was due on 10.01.2022, is hereby extended up to January 19, 2022;

2. The payment of Sales Tax & FED, which was due on 15.01.2022, is hereby extended up to January 21, 2022

3. The date of submission of Sales Tax & Federal Excise Return, which is due on 18.01.2022, is hereby extended up to January 24, 2022

LINK OF DOCUMENT

https://khilji.net.pk/wp-content/uploads/2022/01/2022-01-17-Extension-in-Date-of-STR.pdf

FBR (Launching of Single Sales Tax Return in IRIS)

It may kindly be noted that recently **FBR** has **launched** a **NEW SINGLE PORTAL** in IRIS tab **for filing of all sales tax returns (FEDERAL + PROVINCIAL)** to encourage harmonization of tax procedures.

Compliance in this regard is effective for the tax period December 2021 (to be filed in January 2022). (Link of Notification appended below)

https://khilji.net.pk/wp-content/uploads/2021/12/FBR-Notification.pdf

You are therefore requested to kindly **complete the biometric verification of principal officer/director** as soon as possible for the purpose of filing of said sales tax return and subsequent tax periods.

RECREATIONAL EVENT BY KCO

A cricket tournament was arranged on December 04, 2021 at a local cricket ground. The event was participated by the current and former KCO members and friends. The sunny and pleasant weather added to the cricket fun. A total of four teams played in the tournament.

The winner of the tournament was team of our DHA Office.

The attendees and participants were served with lunch and refreshments.

WORD OF THE MONTH
Agog | Adjective |
Meaning: Very eager or curious to hear or see something.
Synonyms: Excited, impatient, wide-eyed with enthusiasm.

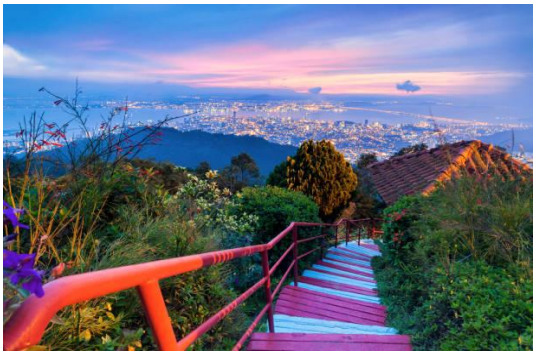
LAUGH & SHARE
A new manager spends a week at his new office with the manager he is replacing. On the last day the departing manager tells him, "I have left three numbered envelopes in the desk drawer. Open an envelope if you encounter a crisis you can't solve."
Three months down the track there is a major drama, everything goes wrong - the usual stuff - and the manager feels very threatened by it all. He remembers the parting words of his predecessor and opens the first envelope. The message inside says, "Blame your predecessor!" He does this and gets off the hook.
About half a year later, the company is experiencing a dip in sales, combined with serious product problems. The manager quickly opens the second envelope. The message

read, "Reorganize!" This he does, and the company quickly rebounds.
Three months later, at his next crisis, he opens the third envelope. The message inside says, "Prepare three envelopes".

TRAVEL GUIDE TO MALAYSIA (PART I)

Malaysia is one of the most visited countries in Asia because of its beauty, diversity and outstanding infrastructure. From the stunning sights, culinary to cultural diversity, there is a lot to explore in Malaysia. Starting from its capital Kuala Lumpur; Petronas Towers, the Perdana Botanical Garden and the Menara KL Tower are to name a few must see sights. Penang is another exciting destination in Malaysia. It is a big island on the west coast and is known for its delicious continental street food which is available with a beautiful view of a waterfront. Another beautiful place with green rainforests and plenty of wildlife is Malaysian Borneo. Those who are interested in sightseeing history, colony and culture, then Malacca is that place. It is close to Kuala Lumpur and one can travel by bus.

Tamara Negara is Malaysia's oldest national park and also believed to be one of the world's oldest tropical rainforests. It has waterfalls, caving, trekking facility, fishing, rafting and many other outdoor entertainments. While we are already talking about natural beauty, Cameron Highlands also cannot be forgotten. There are tree plantations, greenery, hiking trails that are piled around volcanoes. There are strawberry farms, butterfly gardens and greenhouses of flowers, fresh vegetable and locally produced honey in these Highlands. You will not get bored exploring new places everyday in Malaysia.
Source: https://www.tripsavvy.com/top-destinations-in-malaysia-1458504


Penang


Malaysian Borneo

PERSONALITY OF THE MONTH

Nawabzada Liaquat Ali Khan was the first prime minister of Pakistan who was born in October 1895, in India. He came from a well-off and socially popular family, but little is known about his childhood. In 1913, he graduated with a BSc degree in Political Science and LLB in 1918. He was awarded a scholarship by the British Government to pursue further education at Exeter College, Oxford. He was active in extra curriculars and participated in student unions at Oxford. He was elected Honorary Treasurer of the "Majlis Society", which was a student union founded by Indian Muslim students for the promotion of Indian students' rights at the University.
Liaquat Ali Khan was a barrister by profession and entered into politics in 1923. He was among the leading founding fathers of Pakistan and was highly admired and respected by the Muslim community of the sub-continent due to his struggle for Pakistan. After the death of Quaid e Azam, Liaquat Ali Khan was known as Quaid-e-Millat (leader of the Nation) and Shaheed-e-Millat (Martyr of the Nation).
During his tenure as a prime minister, he also held cabinet portfolio as the first foreign, defense and frontier regions minister. Before the partition in 1947, Liaquat Ali Khan served as the first finance minister in the interim government led by Governor General Mountbatten. Liaquat Ali Khan was assassinated in 1951, at a political rally in Rawalpindi. The assassin was caught red-handed, but the legacy of an upright leader died forever.
Source: https://www.britannica.com/biography/Liaquat-Ali-Khan
https://en.wikipedia.org/wiki/Liaquat_Ali_Khan

UPCOMING EVENTS

TAX LAW CERTIFICATE (TMUC Program) 2022

After the successful completion of 1st session, **TMUC-Center of Executive Learning** is pleased to launch the certificate once again. Course Starting from March 04, 2022. Last date of registration is February 28, 2022

VENUE: THE MILLENNIUM UNIVERSITY COLLEGE, ISLAMABAD CAMPUS NO 68, H-11/4, ISLAMABAD

Course Levels & Fee Structure

- Basic Level - 3 months (PKR 30,000)
- Advance Level - Additional 3 months (PKR 50,000)

Last date for Registration: February 28, 2022
Classes : Friday, Saturday 3 Hours/Day
Knowledge partner: KHILJI & CO.

Trainers

- Mr. Sharif uddin Khilji, FCA
- Mr. Muhammad Waheed Iqbal, FCA
- Mr. Rahat Gul, FCA

For Registration:

Syed Asim Habib @ 03215173347,
info@khilji.net.pk , asim.habib@khilji.net.pk

Please see flyer at **https://khilji.net.pk/wp-content/uploads/2022/02/Flyer-1.0-2022-Khilji-Co-V5.pdf.**

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