

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



NEWSLETTER

MAY 2022



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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 provide your valuable comments to make this more informative and useful. It has been always a pleasure to be of service to our clients.

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CONTENTS

- **SINDH HIGH COURT, KARACHI. SSTRA 191 OF 2018**
- **LAHORE HIGH COURT JUDICIAL DEPARTMENT W.P. NO. 7555**
- **NOTIFICATIONS / CIRCULARS**
- **PEOPLE & PLACES**
- **SOCIAL MEDIA PRESENCE**

CASE LAW: 1

IN THE HIGH COURT OF SINDH AT KARACHI; SSTRA 191 OF 2018 DATED MAY 06, 2022

BRIEF FACTS:

The petitioner filed an appeal before High Court of Sindh at Karachi on the issue that the Appellate Tribunal Inland Revenue and Commissioner (Appeals) has annulled the assessment order by deleting the default surcharge and penalty on late payment of sales tax. Both the authorities considered that petroleum sector was severely hit by the national calamity of circular debt which causes the delay in sales tax payment in case of subject taxpayer. In the instant case, the taxpayer operated under unique circumstances wherein the vicious circle of circular debts had so badly affected the cash flow of the taxpayer that it was not even possible to pay off the liability of sales tax.

Notwithstanding the above, the taxpayer even discharged his sales tax liability late. And the auditors have shown doubts of "Going Concern Assumption" for the quarter July-September 2016. Keeping in view all the mentioned circumstances, both the authorities have viewed that there is no willful default hence the imposition of penalty and default surcharge is not justifiable.

Being aggrieved the department has filed appeal before High Court of Sindh at Karachi against the orders passed by ATIR & CIR (Appeals) in favor of taxpayer.

OBSERVATION OF THE TRIBUNAL:

The learned tribunal has observed the following issues:

- i) That the vicious circular debt was linked to Federal Government and authorities have no right to impose upon entities who are unable to fulfill their tax liabilities in a timely manner thereto.
- ii) Both the Authorities relied upon various case laws vide which it is clear that penalties and default surcharge cannot be imposed when there is no means on part of taxpayer.
- (iii) The Honorable High Court referred the case of Tianshi International by merely replying that section 34 of STA, 1990 is not different from Section 161/205 of ITO, 2001, where imposition of default surcharge proved hypothetical which is illegal and null in the eyes of law.

The honorable high court had framed the following question of law for deliberation and determination.

Whether, in the present facts and circumstances, the levy of default surcharge and penalty upon the respondents was warranted per the law?

DECISION:

The Honorable High Court after discussing the legal provisions and case laws presented before this forum has passed the order in favor of taxpayer in following words:

Quote:

"13. In view of the reasoning and rationale contained herein, duly bound by the enunciation of law expounded by the earlier Division Bench judgments of this Court in Tianshi International read with China Power per the Multiline principles, the question reframed for determination by this Court is answered in the negative, hence, in favor of the respondent/s and against the applicant department. These reference applications stand disposed of in the above terms.

14. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal Inland Revenue, as required per section 47(5) of the Sales Tax Act, 1990. The office is directed to place copies hereof in each of the connected references." **Un-quote**

CASE LAW: 2

IN THE LAHORE HIGH COURT JUDICIAL DEPARTMENT W.P. NO. 7555 OF 2022 DATED MAY 06, 2022

BRIEF FACTS:

The petition has been filed by the taxpayer where it was apprised that Commissioner (Appeals) may grant stay for the period of 60 days under section 128(1AA) if there is some appropriate justification and undue hardships faced by the taxpayer. After the aforesaid mentioned statutory period, appellant should file stay extension application, which the CIR(Appeals) may issue rejection order or does

not respond on that. Upon receiving rejection order, appellant has the right to file interim appeal before Appellate Tribunal Inland Revenue and the usual practice is that the ATIR is giving stay after the expiry of statutory period which is against the principle of administration of Justice, “actus curiae neminem gravabit”. Further ATIR should give direction to CIR(A) for disposal of appeal within stipulated time. And if the appeal is not settled by CIR(A) during the given time frame or during the period of stay granted by ATIR then the appellant again may file stay extension application before ATIR which will be entertained or rejected.

Notwithstanding the above, it is apprised that Commissioner should refrain from recovery until and at least the appeal proceedings are completed by first forum i.e. CIR(A).

OBSERVATION OF THE TRIBUNAL:

The learned tribunal has observed the following issues:

That after the issuance of recovery notice u/s 138 of ITO, 2001, Commissioner may grant stay for the period mentioned in section 128(1AA) of ITO, 2001. After that appellant may file stay application before ATIR which may grant stay against the recovery proceedings along with direction to CIR(A) for disposal of appeal within that stipulated time. If the delay is on part of department or there is any valid justification for undue hardship then the ATIR may further extend the stay beyond statutory period.

DECISION:

The Honorable High Court after discussing the legal provisions and case laws presented before this forum has passed the order in following words that stay may be extended by ATIR:

Quote:

“8. The order for rejection of application and of declining interim relief is appealable before the Appellate Tribunal. The Appellate Tribunal is also not expected to grant interim relief as a practice and in routine. Findings of facts by Commissioner (Appeals) need to be given weightage, unless proved otherwise before it through un rebuttable evidence or record. The order of granting interim relief must be reasoned and speaking.

If appeal is not decided within the time for which interim relief is granted by the Appellate Tribunal, its extension, during pending appeal before Commissioner (Appeals), would again require determination of delay, which can neither be done by Appellate Tribunal nor this Court in constitutional jurisdiction. Since Commissioner (Appeals) alone can determine or attribute delay, therefore, the application for extension of interim relief granted by Appellate Tribunal, beyond statutory period, shall be moved before it and rest of the procedure shall be followed, as directed hereinabove.

This and connected petitions are **disposed of** with the directions.” Un-quote

NOTIFICATIONS / CIRCULARS

NOTIFICATION NO:

SRO. 598(I)/2022

DATE OF ISSUANCE:

MAY 19, 2022

EFFECTIVE FROM:

WITH IMMEDIATE EFFECT (i.e. MAY 19, 2022)

AMENDMENTS MADE IN:

IMPORT POLICY ORDER, 2022

COMMENTARY:

FBR has banned several items to be imported in Pakistan by inserting new entries (i.e. from 53 to 85) after Sr. No. 52 of Import Policy Order, 2022 vide SRO 598(I)/2022 dated May 19, 2022. As we know that the imports and exports play vital role in the progression and development of country and the people of the country will become prosperous when the proportion of exports is more than imports. Therefore, keeping in view the detreating current account balance resulting in rupee depreciation, Government of Pakistan has taken step to ban/restrict imports on non-essential/luxury goods. The following is the list of banned items.

Sr. No.	Banned Product
53	Aerated Water and Juices
54	Auto CBU
55	Sanitary and Bathroom Wares
56	Carpets (excluding from Afghanistan)
57	Chandeliers and Lightning Devices or Equipment
58	Chocolates
59	Cigarettes
60	Confectionary Items
61	Corn Flakes etc.
62	Cosmetics and Shaving Items
63	Tissue Papers
64	Crockery
65	Decoration/Ornamental Articles
66	Dog and Cat Food
67	Doors and Window Frames
68	Fish
69	Footwear
70	Fruits and Dry Fruits
71	Furniture
72	Home Appliances CBU

73	Ice Cream
74	Jams, Jellies and Preserved Fruits
75	Luxury Leather Jackets and Apparels
76	Mattress and Sleeping Bags
77	Frozen or processed Meat
78	Mobile Phone CBU
79	Musical Instruments
80	Pasta Etc.
81	Arms and Ammunition
82	Shampoos
83	Sunglasses
84	Tomato Ketchup and Sauces
85	Travelling Bags and Suitcases

FBR NOTIFICATION

NOTIFICATION NO:

SRO. 597(I)/2022

DATE OF ISSUANCE:

MAY 19, 2022

EFFECTIVE FROM:

WITH IMMEDIATE EFFECT (i.e. MAY 19, 2022)

AMENDMENTS MADE IN:

INCOME TAX RULES, 2002 VIDE SRO 549(I)/2022 DATED APRIL 23, 2022

COMMENTARY:

Earlier FBR has proposed draft amendment in Rule 74 (2) of Income Tax Rules, 2002 vide SRO 549(I)/2022 dated April 23, 2022 that FBR has obtained legal backing to serving of notices electronically in all such cases where the department has registered electronic address of the taxpayer. However, FBR has made further amendments vide thin Rule 231C in continuance of aforementioned SRO;

Existing	Substituted
Sub-Rule (2) Clause (a) “Where a person has notified the Commissioner in writing of an electronic address for service of documents under the Ordinance or rules a document required to be served on	Sub-Rule (2) Clause (a) “Where a person has provided an electronic address, the document required to be served on the person shall be considered sufficiently served if sent to that address.”

<p>the person by the Commissioner or “Chief” Commissioner shall be considered sufficiently served if sent to that address.”</p>	
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SECP NOTIFICATION

The Securities and Exchange Commission of Pakistan (SECP), through, S.R.O. 602(I)/2022, dated May 14, 2022, has made revisions to the third schedule of the Companies Act, 2017.

Through this notification, SECP and made amendments in the threshold of turnover for appropriate framework have been revised downward. Following this amendment, ICAP has prepared the attached publication, which provide the context of changes made by SECP in the third schedule of the Companies Act, 2017, and to provide a comparison of the revised third schedule with the previous version of the schedule.

The self-explanatory SRO and ICAP’s publication is appended in the below links:

<https://khilji.net.pk/wp-content/uploads/2022/06/SECP-SRO-602-of-2022.pdf>

<https://khilji.net.pk/wp-content/uploads/2022/06/Revised-Third-Schedule-of-Companies-Act-2017.pdf>

FBR CIRCULARS

1. Federal Board of Revenue has issued Circular 1 of 2021-22 (International Taxes)

Through this circular FBR issued Extension in the deadline for filling of Statement under section 165B of the Ordinance read with Rule 78L Chapter XIAA of the Income Tax Rules, 2002 up to June 15th, 2022.

Please click below to read the original circular.

<https://khilji.net.pk/wp-content/uploads/2022/06/2022611462241222Circular01-2022InternationalTaxes.pdf>

2. Federal Board of Revenue has issued Circular No. 14 of 2022 (AEOI Implementation Manual)

FBR has issued AEOI implementation Manual (Annex-I) for guidance of International Taxes, FBR, and AEOI Zones.

Please click below to read the original circular.

<https://khilji.net.pk/wp-content/uploads/2022/06/20225311152835661CircularNo.14of2022Dated31.05.2022%E2%80%93AEOIImplementationManual.pdf>

BUDGET 2022-2023

The Budget for the year 2022-2023 is expected to be presented in National Assembly on 10 June 2022. As per previous practice, Khilji & Co. will be issuing salient features of the budget followed by our detailed commentary on the Finance Bill and later on Finance Act for the benefit of valued clients and will be pleased to receive your feedback on the same.

WORD OF THE MONTH

Diaphanous | Adjective |

Meaning: (especially of fabric) light, delicate, and translucent.

Synonyms: Sheer, fine, thin, silken, gauzy.

LAUGH & SHARE

A young accountant fresh out of college is interviewed by the owner of a small business. "I need someone with an accounting degree," says the man. "But mainly I'm looking for someone to do my worrying for me. I have lots of things to worry about, but I want someone else to worry about money matters."

"OK," says the accountant. "How much are you offering?"

"You can start at \$75,000 a year," says the owner.

"That's a great salary!" says the young accountant. "How can a business like yours afford to pay so much?"

"That," says the man, "is your first worry."

TRAVEL GUIDE

SCOTLAND

If stately castles, beautiful valleys, snow-capped peaks, old-fashioned small towns and glass-like sounds interest you, then there is no place like Scotland. The tourists can go for hiking, biking or just for viewing the serene landscape of this beautiful country. Scotland has the best national parks in the UK and more than 900 offshore islands with amazing wildlife. Scotland was previously known as Caledonia.

The weather of this country is a little cold, even during summers but May to September is the best time to visit it. To be specific, June and the first two weeks of July are the best when the sun sets around 11pm and prices are generally low in these few weeks.

If you like to drive, then you can on empty roads, to view the coastal scenery, awesome beaches, old fishing villages and much more. Even on foot, one can view the scenic beauty and the West Highland Way.

Scotland also has one of the world's best train journeys. There is no dearth of hotels in the major cities of Scotland and many of the country's castles have been converted into hotels. Scottish people give a warm welcome to their guests and wherever tourists stay, they are treated with a

hot bowl of Scottish porridge or other traditional food to start their day in the stunning country. The must go places in Scotland are Glasgow, Edinburgh, Scottish Highlands, St. Andrews, Loch Ness, Inverness, Aberdeen, Loch Lomond, Stirling, Isle of Arran, Isle of Skye and Fort William.

Source: <https://www.travelandleisure.com/travel-guide/scotland-united-kingdom>



St. Andrews



Loch Ness



Isle of Skye

PERSONALITY OF THE MONTH

SHEIKH KHALIFA BIN ZAYED AL NAHYAN

The late Sheikh Khalifa bin Zayed Al Nahyan was the second president of UAE who succeeded his father (the founder of the UAE Sheikh Zayed bin Sultan) in 2004. Al Nahyan was born in 1948 and was the eldest son who assisted his father for the foundation of the Emirates. Al Nahyan's first appointment was as head of the courts in Abu Dhabi in 1966, followed by many senior positions until he led the government as chief executive and a supervisor for the implementation of key projects. After three years, he took the role of the crown prince of Abu Dhabi with additional responsibility of Defense department.

Among other responsibilities, Al Nahyan took the roles of the ruler of Abu Dhabi, local minister of defense and finance, deputy prime minister, supervisor of the Executive council for the achievement of comprehensive development programs in Emirates and chairman of the Federal Supreme Council. As President of UAE, Al Nahyan continued his father's legacy for a prosperous future of the UAE and apart from other economic endeavors, he successfully pursued the development of oil and gas sector. The establishment of UAE with top class infrastructure would not have been possible without the late Al Nahyan.

The late Sheikh pursued an active foreign policy and built strong relations with countries of Asia, Europe, and other Arab states. He was a philanthropist as well whose financial and non-financial support spreads to over 70 countries of the world. Al Nahyan was proactive and always responded to natural disasters like the 2005 earthquake in Pakistan. He provided millions of polio vaccines for Pakistani children in Pakistan under the age of five between 2014 and 2016. He used to take keen interest in sports, especially in football and supported local, regional and international teams. Al Nahyan passed away on 13 May 2022 at the age of 74.

Source: <https://u.ae/en/about-the-uae/the-uae-government/government-leaders/hh-sheikh-khalifa-bin-zayed-al-nahyan>

SOCIAL MEDIA PRESENCE

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<https://chat.whatsapp.com/BHCSFRh1rfuIBSwtIWJWFp>

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https://www.youtube.com/channel/UCA4UjhDS_AMKNOFVu7_Qjvg