

Tax Bulletin

October 2022

Foreword



This publication contains brief commentary on Circulars and SROs issued during September 2022 and important reported decisions.

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Executive Summary

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Income Tax Ordinance, 2001

A. SROs

1. SRO 1733(I)/2022 dated September 13, 2022

Manual Income Tax Return Forms

The FBR has approved and added the manual return forms in the Second Schedule, Part II of the Income Tax Rules, 2002 for the following persons as were previously proposed through SRO 1612 dated August 26, 2022:

- Individuals deriving income under any head other than salary/salary; and
- Individuals deriving income under the head business and any other head except salary.

The return forms are applicable for Tax Year 2022.

2. SRO 1768(I)/2022 dated September 27, 2022

Draft amendments in Rule 13L and 13P of the Income Tax Rules, 2002 (the Rules)

a) Change in the definition of Cost of acquisition of right shares:

Through the introduction of SRO 1768, amendments have been proposed in the definition of 'cost of acquisition' as defined under rule 13L of the Rules. Amendments have also been proposed in the determination of cost of acquisition of right shares, which now proposes to include cost of acquisition of letter of rights with the discounted price at which the right shares were issued.

b) Change in the calculation of Capital gains under Rule 13N:

Sub-Rule 5A of Rule 13N of the Rules specifies that rates provided in Division

VII, Part I of the First Schedule to the Ordinance are applicable on the capital gains derived by a taxpayer depending on his status as filer/non-filer. The SRO now proposes to introduce a proviso after sub-rule 5A which requires NCCPL to determine the status of the taxpayer at the end of the tax year as filer /non-filer to adjust the capital gains tax liability calculated.

c) Tax treatment for disposal of bonus shares under sub-rule (q) of Rule 13P of the Rules:

Currently, effective from July 1, 2014 cost of bonus shares for computing capital gains on disposal of bonus shares is equal to the price prevailing on the first day of book closure i.e. ex-bonus price. The SRO proposes to substitute the complete tax treatment provided under sub-rule (q) with the new tax treatment as under:

- (i) where entitlement of bonus shares is of prior to July 1, 2014 or from July 1, 2018 and onwards, the cost of such shares shall be computed by spreading the cost of old shares over the old shares plus the bonus shares taken together. This cost of a share shall be the same for the old shares and the new shares and will be used for computing capital gains for both old shares and bonus shares.
- (ii) Whereas, for the period from July 2014 till June 30, 2018, cost of bonus shares would remain equal to ex-bonus price and the old shares would be taken at actual cost for the purpose of calculating capital gains on disposal.

d) Proposed change in tax treatment of Right issue:

Currently, in case of disposal of Letter of Right (LoR) before subscription, sale proceed are treated as capital gains.

Through the SRO, the tax treatment is fully substituted with the following:

- sale proceeds received by the taxpayer shall be equal to the market value of the LoR;
- Cost of acquisition of LoR shall be the price paid by the investor to acquire such LoR;
- Cost of acquisition of right shares shall be the price of right shares, including price paid for acquisition of LoRs. However, where right shares are not credited on or before 45 days from the date of delisting of LoRs by CDC, these LoRs shall be deemed as disposed of at zero price; and
- Capital gain or loss on disposal of LoRs or rights shares shall be computed as difference of consideration received from disposal and the cost of acquisition.

3. Revision in the value of immovable properties

The Federal Board of Revenue (FBR) has revised the fair market value of immovable properties through its various SROs issued in September 2022. The new SROs issued and locations are tabulated below for further reference:

S. No.	City	Reference	Date
1	Rawalpindi	S.R.O. 1734(I)/2022	September 13, 2022
2	Dera Ismaeel Khan	S.R.O. 1735(I)/2022	September 13, 2022
3	Attock District	S.R.O. 1736(I)/2022	September 13, 2022

4. SRO 1797(I)/2022 dated September 29, 2022

Capital Value Tax Rules, 2022

FBR has introduced Capital Value Tax Rules, 2022 through the SRO 1797, that are effective from immediate effect. These are introduced in continuation of Capital Value Tax introduced through Finance Act, 2022 that is applicable from Tax Year 2022 and onwards.

For further details, refer the following link:

[https://download1.fbr.gov.pk/SROs/2022/292818978926SRONo.1796\(I\)of2022dated28.9.22.pdf](https://download1.fbr.gov.pk/SROs/2022/292818978926SRONo.1796(I)of2022dated28.9.22.pdf)

5. SRO 1829(I)/2022 dated October 3, 2022

Draft amendment in 'tax chargeable/ payment' section of the return forms

FBR has proposed amended 'tax chargeable/payments section' of the return form wherein line items related to the newly introduced section 7E of the Income Tax Ordinance, 2001 - Tax on deemed income, are introduced.

Circulars

1. Circular 16 of 2022

Extension in date of filing of return of income for Tax Year 2022

FBR has extended the due date of filling of return of income for Tax Year 2022 from September 30, 2022, to October 31, 2022.

B. Reported Decisions:

1. 2022 PTD 1253 SINDH HIGH COURT Messrs Akhter Eye Hospital (PVT) Ltd VS Commissioner of Inland Revenue

Applicable Sections: 27, 27(3), 28, 29 of the Income Tax Rules, 1982 (the Rules) and 133(1) of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

Taxpayer (the Appellant), registered as private limited company, engaged in the business of Eye Hospital was confronted by the Taxation Officer (TO). While amending the assessment for assessment year 2000-2001, 2001- 2002, and tax year 2003, the TO found out that the Appellant failed to maintain proper books of accounts as required under Rule 28 and 29 of the Rules and, accordingly, rejected the trading results and estimated the trading receipts of the taxpayer merely on the ground that full addresses of the patients have not been given and their CNIC numbers have not been mentioned in the accounts.

Appeals were filed by the Appellant before Commissioner Inland Revenue-Appeals (CIRA) and then before Appellate Tribunal Inland Revenue (ATIR), which were decided in favour of the TO. Being aggrieved, the Appellant filed Income Tax Reference before the Sindh High Court (the SHC) and raised the following question of law:

- Whether CIRA and ATIR were justified in rejecting the accounts on the basis of non-maintenance of registers under Rule 27(3) and 29 of the Rules, without pointing any defect in the method of accounting regularly employed by the Appellant.

Decision:

The case was decided in favour of the Appellant. It was held by SHC that:

- Appellant is a hospital which deals with OPD patients who come to hospital for their treatment and is not practically possible to ask every such patient of his full residential address and CNIC number which is also not the requirement of either Rule 27 or Rule 29 of the Rules,
- Persons falling under Rule 27 or 29 of the Rules are required to maintain a case register with patient's name, nature of treatment, treatment charges and the receipt and payment book, which squarely applies on the Appellant who satisfactorily complied with accordingly.
- Department's plea that Rule 28 has not been complied with cannot be endorsed as in the case of medical practitioners who do separately charge for consultation but only for medicines supplied, are required to maintain books of accounts as per Rule 28 whereas those not referred therein, are required to maintain their books of accounts as per Rule 27 and 29 of the Rules;
- There are judgments whereby it has been pronounced that trading results cannot be rejected on the basis of non-supply of addresses of the purchasers in case of cash transactions which is similar to the case in hand.

2. 2022 PTD 1290 High Court of Baluchistan Quetta Commissioner Inland Revenue VS M/S. Saindpak Metals Ltd

Applicable Sections: 120(1)(b), 122(1), 122(2), 122(4), 122(5A), 133 of the Income Tax Ordinance, 2001 (the Ordinance).

Brief Facts:

The Taxpayer filed return of income for Tax Year 2006 on December 30, 2006 which is deemed assessment order under section 120 of the Ordinance. The original assessment order was amended by Additional Commissioner Inland Revenue (ADCIR) under section 122(5A) of the Ordinance vide order dated June 30, 2012. Being aggrieved, the Taxpayer filed appeal before the Commissioner Appeals, however, the appeal was dismissed through order dated April 14, 2014. The Taxpayer then filed appeal before the ATIR who allowed the appeal and set aside the amended assessment order. The petition was filed by the Commissioner Inland Revenue (CIR) before the High Court of Baluchistan against the order passed by the ATIR. It was contended that amended assessment order was passed within time period of five years after the end of the financial year in which the assessment order was passed or treated to have been passed as specified under amended section 122(2) of the Ordinance as the financial year ended on 01-07-2007 and the order was passed within time i.e. on June 30, 2012. The Taxpayer on the contrary contended that assessment order relates to Tax Year 2006 and as per the law applicable then, an assessment order shall only be amended within five years after the Commissioner has issued or is treated as being issued the assessment order.

Decision:

The High Court, dismissed the case in the light of Section 122(2) of the Ordinance wherein, any said order could be amended within five years after the Commissioner has issued or is treated as having issued the assessment order on the taxpayer i.e. return was filed on December 30, 2006 and limitation commenced on January 01, 2007 and said order could be amended within five years from the date i.e. till December 31, 2012, therefore, the order amendment of assessment stands time-barred.

**3. 2022 PTD 1297
Federal Tax Ombudsman
Alamgir Khan Feroze VS The
Secretary, Revenue Division,
Islamabad**

Applicable sections: 111, 122(5A), 124, 140, 170(3) of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

Alamgir Khan Feroze (the Taxpayer), filed refund application under section 170 of the Ordinance with refund amount of Rs. 5,725,694 after filing of his return of income for Tax Year 2013. The Commissioner Inland Revenue (CIR) failed to pass the refund order in respect of refund application filed within sixty days of receiving the application, as required under section 170(4) of the Ordinance. Instead, assessment proceedings under section 122 of the Ordinance were initiated for Tax Years 2009 and 2013. Though, no adverse inference was drawn against Tax Year 2013, for Tax Year 2009, an ex-parte order was passed within twenty days of initiation of the proceedings. The Taxpayer filed appeal before the Commissioner Appeals against the order for Tax Year 2009 which was decided in favour of the tax department.

Subsequently, the Department without the consent of the Taxpayer adjusted full refund amount of Tax Year 2013 against the tax liability created for Tax Year 2009 and recovered the remaining tax demand of Rs. 547,810 under section 140 of the Ordinance.

Being aggrieved by the decision of Commissioner Appeals, the Taxpayer filed appeal before the Appellate Tribunal Inland Revenue (ATIR), which decided the case in favour of the Taxpayer, vacating the previously passed two orders and remanded back the case to the Assistant Commissioner Inland Revenue. Despite multiple follow-ups by the Authorized Representative (AR) of the Taxpayer, the Department failed to give appeal effects to ATIR's order within the stipulated time.

The Department then filed petition before the Lahore High Court, which was dismissed on the basis that the case is already remanded back to the Assistant Commissioner. No appeal effect order was passed by the Department in this regard despite of multiple follow-ups of the Taxpayer. The taxpayer on non-responsiveness of the department filed the subject complaint before the FTO.

The Department submitted a letter before the FTO in response to the complaint filed contending that since the matter has been taken for decision afresh, therefore, refund cannot be issued, until the completion of proceedings.

Decision:

After reviewing the facts of the case, it was held by the FTO that there is maladministration on part of department due to the following:

- Failed to reassess the issues as per the order of the ATIR; and
- Causing hardship to the Taxpayer due to indifferent attitude of the Department.

Considering the above, the Department was directed to give appeal effects under section 124 of the Ordinance in respect of ATIR's order and to settle the refund of Tax Years 2009 and 2013 within thirty days after providing opportunity of being heard and to hold an inquiry for the negligence caused during the proceedings and take appropriate action in order to forestall such instances in future.

4. 2022 PTD 1319 Appellate Tribunal Inland Revenue Faisal Electronics VS Commissioner Inland Revenue

Applicable sections: 122, 111, 174 and 177 of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

The Taxpayer filed return of income for Tax Year 2019 for which deemed assessment order under section 120 of the Ordinance was passed. The return of income for the said tax year was selected for audit under section 177 of the Ordinance. During the audit proceedings, the Tax Officer, being dissatisfied with the submissions, requested further information from the taxpayer and issued show-cause notices under sections 122(9) for amendment of assessment and 111(1) of the Ordinance in terms of unexplained income and assets.

Disregarding the submissions of the Taxpayer, the Tax Officer passed the amended assessment order, whereby, additions to income of the Taxpayer were made on account of unexplained bank credit entries of Rs. 4,294,183 and foreign remittances of Rs. 482,718. Also, expenses amounting to Rs. 1,749,962 and Rs. 60,000 were disallowed under sections 174(2) and 21(l) of the Ordinance.

The Taxpayer filed appeal before the Commissioner Appeals, who after hearing the arguments deleted addition made under section 111(1)(b) of the Ordinance of Rs. 482,718 and confirmed the other additions and disallowances made by the Tax Officer. Being aggrieved by the above decision, the Taxpayer filed appeal before the Appellate Tribunal Inland Revenue (ATIR).

Decision:

Arguments presented by the Taxpayer's Advocate mainly include that the Tax Officer after completion of the audit proceedings neither issued audit report nor gave opportunity of being heard to the Taxpayer before amending the original assessment order. In this regard, the Advocate also relied on various judgments such as 2017 PTD 686, 2018 PTD 1444 and I.T.A. No. 1540/KB/2019. It was also contended that the order was passed in the absence of definite information in respect of the issues raised and producing evidences before the Taxpayer.

In response to the above, the Department's representative declared the submissions of the Taxpayer unsatisfactory resulting in passing of the above-mentioned order.

The ATIR while deciding the matter relied on various judgments of Supreme Court of Pakistan, Sindh High Court and ATIR, whereby it was held that taxpayers' explanation shall be sought in respect of all issues raised by the tax department in the audit proceedings. Further, definite information should be available to the tax officer that leaves no room for assumption or doubt. However, in the instant case only definite information available with the tax department was the difference between the credit entries and revenue declared.

Since the conditions specified above were not met, therefore, the ATIR decided the case in favour of the Taxpayer, annulling the order for amendment of assessment.

**5. (2022)126 TAX 19
INLAND REVENUE APPELLATE
TRIBUNAL
Commissioner Inland Revenue
VS Messrs Star Marketing (Pvt)
Ltd**

Applicable Sections: 120, 121, 122, 122C, 182, 182(1) of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

The taxpayer (the respondent) is a private limited company that derives income from providing marketing and related services, filed income tax return for the tax years 2008 to 2011. The department confronted the respondent through penalty orders for late filing of income tax returns for the subject tax years against which appeals were filed before Commissioner Inland Revenue-Appeals (CIRA). The department filed appeal before ATIR in respect of below matters:

- CIRA misinterpreted the expressions 'tax payable' and 'tax chargeable' as having different meanings;
- Explanation if inserted in the main section, subsequently, will have the effect from the date of promulgation of main section i.e. retrospective effect;

Decision:

The ATIR concurred the finding of CIRA and dismissed the appeal filed by the department on the following grounds:

- The tax payable is the tax which is required to be paid at the time of filing of income tax return whereas tax chargeable denotes the tax on the total income for the tax year which includes the tax withheld by the withholding agents of the tax payer, therefore, both the words are different and correctly analyzed by CIRA for the purpose of imposing penalties under the Ordinance.
- It has already been held by the honorable courts that any change in the statute which enhance, expand or broadened the scope of the liability will operate prospectively and not retrospectively.
- Retrospective liability is only imposed when an explanation attributes a meaning to a substantive provision or expression whereby the burden, obligation or liability of a person is increased for a past period.

Sales Tax Act, 1990

A. Sales Tax General Order (STGO)

i. STGO No. 03 of 2023, dated September 06, 2022

Tier-I Retailers - Integration with FBR's POS System

FBR has adopted practice of notifying retailers (who have not yet integrated with FBR's system) as Tier-1 Retailer [2(43A) of Sales Tax Act, 1990] through STGO. This STGO is issued every month in the first 5 days of the calendar month with effect from August 3, 2021.

Vide the subject STGO, a list of further 81 persons identified as Tier-1 Retailers, has been placed on FBR's web portal requiring them to integrate with FBR's system by September 10, 2022. In case of failure to make the requisite integration by such notified persons, their adjustable input tax for the month of September 2022 would be disallowed up to 60% as per sub-section (6) of section 8B of the ST Act, without any further notice or proceedings, thus creating tax demand by the same amount.

Any of the notified retailer who claims itself to have been wrongly notified as Tier-1 Retailer and whose input tax adjustment has been reduced by 60%, may file Online application on IRIS portal for removal of this restriction following the procedure laid down in STGO No. 17 of 2022, dated May 13, 2022 and the Commissioner would decide the case in this regard.

B. Reported Decisions

1. 2022 PTD 1336 Appellate Tribunal Inland Revenue, Lahore

Chawala Enterprises vs The Commissioner Inland Revenue Appeals

Applicable Sections: 3, 4, 7, 10, 10, 22, 23, 25, 26, 34, 34(1)(d), 72B of the Sales Tax Act, 1990
S.R.O. 1125(I)/2011, DATED 31.12.2011
S.R.O. 221(I)/2013, DATED 19.03.2013

Brief Facts:

The Assistant Commissioner Inland Revenue (ACIR) observed two discrepancies with regard to the (i) illegal refund received against local sales and (ii) non-payment of sales tax on assumed disposal of polypropylene bags, paper cones and wastages, which were never returned by toll manufacturer.

The registered person being aggrieved with the Order, filed an appeal with CIRA who remanded the case back on point (i) and upheld ACIR order on issue (ii).

The registered person being aggrieved by the order of CIRA, filed appeal with the Appellate Tribunal and argued that:

- The CIRA was not justified to remand the case back for denovo consideration despite the fact that CIRA has himself admitted that refund issued to the appellant cannot be held recoverable only for procedural lapse if it was otherwise admissible under the law.
- On second issue, the Appellant argued that the Appellant is able to demonstrate that the property-in-goods so-procured during the process of weaving rests with

the weavers who disposed-off such wastes subsequently and accordingly discharged its sales tax liabilities. Therefore, demand of sales tax on the aforementioned goods would be equivalent to double taxation which is not permissible under the law (2011 PTD (Trib.)1124).

Decision:

The Tribunal decided the appeal in favour of the registered person and declared the SCN and subsequent orders illegal and, void ab initio and set-aside the case on following grounds:

- The appellant claimed refund in the current tax period instead of carrying forward the excess input tax to the subsequent tax periods which is a procedural omission and technical mistake. **It is settled law that acts of inadvertence on part of taxpayer due to any procedural mistake would not create demand of sales tax.** The ATIR placed reliance in the case of Waqas Enterprises, Faisalabad vs The CIR(Appeals), RTO, Faisalabad" reported as (2019 PTD 120).
- The appellant has supplied yarn to different registered weavers to get it converted into grey cloth on job basis against payment of conversion charges. The said weavers have never returned leftover polypropylene bags, paper cones and wastages to the appellant. **The department has not produced any evidence of supply of such goods, which necessarily entails delivery of goods or receipt of money consideration thereto, without which instant charge is unsubstantiated having no legal force at all hence, no tax could be assessed and recovered thereon.** ATIR placed reliance on the judgment of the ATIR, Lahore reported as (2011 PTD 1124).

**2. 2022 PTD 1209
LAHORE HIGH COURT
COMMISSIONER INLAND
REVENUE V/S
M/S DESCON ENGINEERING
LIMITED**

Applicable Sections:

2 & 3 of the Sales Tax Act, 1990 (the Act)

Brief Fact:

The officer passed the order and created sales tax demand on the respondent taxpayer for not paying sales tax on the procurement of building material used in the construction of building. Feeling aggrieved by said order, the taxpayer filed appeal before Commissioner (Appeals) where imposition of sales tax and default surcharges were upheld while penalty was deleted. Subsequently, second appeal was filed by the taxpayer before the Appellate Tribunal which decided case in favour of the respondent taxpayer. Against the decision of ATIR, the Department filed this reference before the Lahore High Court (LHC).

The applicant department contented that the taxpayer violated the provisions of section 3(1) of the Sales Tax Act, 1990 by not paying sales tax on acquisition of taxable goods. The same further added that the goods consumed in the execution of construction were taxable, constituting taxable supplies and hence the impugned order was unsustainable in the eyes of law. On the contrary, the taxpayer defended the impugned order saying that no supply of goods was involved in building the immovable property as the same was not covered under the definition of goods as defined in section 2(12) of the ST Act.

Decision:

The High Court decided the reference in favor of the taxpayer by stating that:

1. Section 3 of the Act charges tax on the supplier of goods and not on the purchaser; hence, allegation of violation of section 3(1) of the ST Act is baseless.

2. The contract of construction of immovable property is indivisible. The issue of indivisibility of contract of construction of immovable property was also considered by this Court in *International Body Builders v. Sales Tax Officer, Lahore and 2 others* [(1980) 41 TAX 60 (H.C. Kar.)], wherein it was proved that a building contract is one and indivisible and involves no sale of goods. It was further observed that in such a contract, goods pass on as accession to immovable property and no supply of goods is involved.
3. The immovable property falls within the exclusive jurisdiction of the provinces and hence, building of immovable property is not taxable activity for the Federation. In the absence of any taxable activity within the taxing power of the Federation, no charge of sales tax related to said property arises.
4. The building materials being constituent part of immovable property, are integral part of such property. Said material consumed in the construction of immovable property is neither taxable supply nor in furtherance of taxable activity and hence beyond the scope of sales tax under the ST Act.

Above decision has been given by LHC in the backdrop of consumption of construction material by the construction contractors/builders in which case, such consumption will not constitute taxable activity/taxable supply. We understand that aforesaid judgment does not apply to the sales/supplies of such materials by the manufacturer, importer and suppliers, which will remain chargeable to sales tax as per the provisions of the ST Act.

Sindh Sales Tax on Services Act, 2011

A. Notification

i. Notification No. SRB-3-4/36/2022, dated September 13, 2022

Through this notification, SRB has exempted Sindh sales tax payable on following taxable services as certified by NDMA and PDMA to be meant for flood relief operations in Sindh Province. The notification shall stand rescinded on and from January 1, 2023 if not rescinded earlier:

S no.	Tariff Heading	Description of Services
1.	9801.2000	Services provided or rendered by restaurants for free distribution as donation or charity
2.	9801.5000	Services provided or rendered by caterers, suppliers of food and drinks for free distribution as donation or charity
3.	Respective sub-headings of tariff heading 98.02	Advertisement of charity and donations in the PM's flood relief fund or in CM Sindh's relief fund
4.	9806.6000	Renting of machinery, equipment, appliances and other tangible goods acquired and used for rehabilitation and reconstruction.
5.	9829.0000	Labour and manpower supply services provided in the course of flood relief operations.
6.	9836.0000	Services provided or rendered by persons engaged in Inter-city transportation or

S no.	Tariff Heading	Description of Services
		carriage of flood relief goods by road.

B. Circular

i. Circular No. SRB/COM-I//2022-23

E-Registration under Section 24 of the Sindh Sales Tax on Services Act, 2011.

This circular has been issued by SRB for general awareness regarding the services including cosmetic dental surgery, orthodontics, aesthetic dentistry and such other cosmetic and aesthetic dental procedures as taxable under tariff heading 9842.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 for the reason of being covered within the broader scope of the term 'cosmetic and plastic surgery' as defined under section 2(29A) of the SSTSA.

Through the above-mentioned circular, SRB has advised the Dental Practitioners providing aforesaid services to:

- Get registered with SRB through website www.e.srb.gos.pk and follow instructions.
- Charge, levy and collect due SST amount @ 13% on the aforesaid taxable services and deposit the same in Sindh Government's head of account "B02384" in the prescribed manner.
- E-deposit the due amount of SST in any SRB-authorized branch of NBP by 15th of the month following the tax period to which it relates.

- E-file true and correct Sindh sales tax returns in Form SST-03 as prescribed under section 30 of the Act, 2011 by 18th of the month following the tax period to which it relates. (For Example: Return filing and SST payment for the month of September is due on 15th and 18th of October, respectively).

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About Yousuf Adil

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