



# TAXPAK

## Newsletter by Tola Associates



**September 2024**





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# CONTENTS

## Chairman's Message

### FBR Notifications & Circulars

- 1) Income Tax
- 2) Income Tax Circulars
- 3) Sales Tax Notifications
- 4) Sales Tax Circulars
- 5) Sales Tax on Services Notifications
- 6) A. Sindh Revenue Board (SRB)
- 7) B. Punjab Revenue Authority (Pra)
- 8) C. Khyber Pakhtunkhwa Revenue Authority (KPRA)

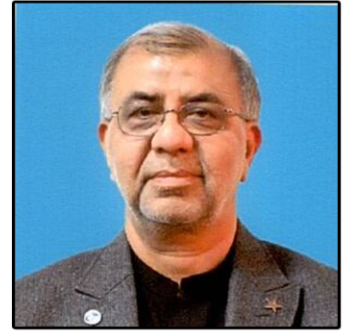
**Case Law:** the hon'ble atir, islamabad annulled the assessment order passed by the assessing officer exceeding the time-frame cited under section 122(9) of the ito.

**Case Law:** The hon'ble shc directed the fbr to withdraw recovery notices issued to soes as there is no other legal remedy available except for forming alternate dispute resolution committees.

## Disclaimer

## Chairman's Message

Assalam-o-alaikum everyone! Hope this monthly issue of TaxPak finds you in good spirits and immaculate health! We welcome you to another edition of TaxPak, our monthly publication the purpose of which is to provide a monthly update on the ongoing tax related developments in Pakistan. Alhamdulillah, so far, we have been successful in our mission to educate about, and keep the public-at-large updated of these developments on a monthly basis.



Moreover, we would like to apprise the readers of what information you can expect in this document. This newsletter contains an elaboration of important Notifications and Circulars issued by the Federal Board of Revenue ("FBR") and its provincial counterparts. Moreover, Notifications from the Corporate regulatory body i.e., SECP are also discussed. As our main aim is to keep the masses updated regarding the developments in the Pakistani tax law, we usually discuss a (relatively) recent judgement passed by the courts of law. This edition of TaxPak consists a discussion of two judgments. The first one has been passed by Appellate Tribunal Inland Revenue, Islamabad ("ATIR") wherein the Hon'ble ATIR annulled the assessment order passed by the assessing officer exceeding the time-frame enshrined under section 122(9) of the Income Tax Ordinance, 2001 ("ITO"). The other judgment discussed, was passed by the Hon'ble Sindh High Court ("SHC"), wherein the Hon'ble SHC directed the FBR to withdraw recovery notices issued to State Owned Enterprises ("SOE") as there is no other legal remedy available for SOEs except for constituting Alternate Dispute Resolution Committees.

All our readers are requested to visit our website [www.tolaassociates.com](http://www.tolaassociates.com) , or download our mobile application in order to access previous published editions of TaxPak along with other publications, and to stay updated of future notifications. Lastly, we request our readers to circulate this e-copy within their circle, as our primary aim is to benefit the masses. Feedback is always welcomed.

Warm Regards,  
Ashfaq Yousuf Tola - FCA,  
Chairman  
**Tola Associates.**

# FBR NOTIFICATIONS AND CIRCULARS

## A. INCOME TAX NOTIFICATIONS

### 1. Amendment in Rules of Alternate Dispute

The FBR vide S.R.O. 1377(I)/2024, dated 6th September, 2024 has amended Rule 231C of Income Tax Rules, 2002 which pertains to Alternate Dispute Resolution. The same had been previously published vide Notification S.R.O. No. 1290(I)/2024, dated the 24th August, 2024. The amendment will be made to include State-Owned Enterprises (“SOE”) under purview of Alternative Dispute Resolution (“ADR”). The amendment shall, inter alia, contain the following new sub-rules:

- State-owned enterprises (“SOEs”) must apply to any disputes regardless of tax liability.
- It is mandatory for SOEs to apply to the Board for the appointment of a Committee if they are aggrieved.
- Any person or class of persons, including a state-owned enterprise, seeking resolution of any dispute must submit a written application for alternate dispute resolution to the Board in the Form as set out in Part I of the Schedule to this rule.
- The Board will notify a panel of officers, chartered accountants, cost and management accountants, advocates, and reputable businessmen, having minimum ten years of experience in the field of taxation based on eligibility criteria.
- The committee will determine the issue, seek further information, and decide the dispute by majority within 45 days of appointment.
- The decision is binding on the commissioner when the applicant withdraws the appeal pending before the court or appellate authority.
- If the order is not communicated within sixty days of the service of decision of the committee upon the aggrieved person, the decision of the committee shall not be binding on the commissioner.
- The applicant must pay income tax and other taxes as decided by the committee, and all decisions and orders will stand modified accordingly.

It is important to note that the matters involving SOEs and ADR is sub-judice before the Hon’ble Islamabad High Court (“IHC”) in Writ Petition no.2518/2024

For further reading: [FBR](#) and [IHC](#)

## **2. DRAFT OF FURTHER AMENDMENTS IN RULES OF ACTIVE TAXPAYERS LIST**

The FBR vide S.R.O No. 1448(I)/2024 dated 18th September 2024 issued draft of certain further amendments in Rule 81B of the Income Tax Rules, 2002 pertaining to Active Taxpayers List for objections or suggestions thereon, if any, of all persons likely to be affected, be sent within seven days of publication of the draft.

For further reading: [FBR](#)

## **B. INCOME TAX CIRCULARS**

### **1. EXTENSION IN DATE OF FILING OF INCOME TAX RETURNS**

The FBR vide circular **NO. 02 OF 2024-25IR-OPERATIONS** dated 30th September, 2024 was pleased to announce that the date of filing of Income Tax return for the Tax Year (TY) 2024, for the persons who are required to file their returns by September 30th, 2024 is hereby extended upto October 14th, 2024. For further reading: [FBR](#)

### **2. ADDITIONAL CHARGE**

The FBR vide notification No 2351-IR-I/2024 dated 9th September, 2024 hereby assigned the additional charge to Mr. Abdul Hameed Abro as Commissioner-IR (OPS) (Appeals-II), Karachi and Mr. Muhammad Nabeel Rana as Commissioner-IR (OPS) (Appeals-I), Karachi.

For further reading: [FBR](#)

## **C. SALES TAX NOTIFICATIONS**

### **1. COMMISSIONER-IR HAVING JURISDICTION TO CONDONE TIME-LIMIT**

The FBR, vide SRO No. 1444(I)/2024, dated 12th September 2024 has empowered Commissioner-IR having jurisdiction to condone time-limit where any time or period has been specified under any of the provision of the Sales Tax Act, 1990, or rules made there under.

The time limit for taxpayer's applications or actions shall be set out by the Commissioner-IR, who can allow them to be made or done within a certain time frame. However, there are certain limitations and conditions; the registered person or authorized person must submit an application stating the reasons for delay, and the Commissioner-IR will decide the case within thirty days if no further information or documents are required. If additional information or documents are required, the Commissioner-IR may request them and decide within 45 days. The case will be decided on merit, and the reasons for approval or rejection will be recorded. If approved, the Commissioner-IR may extend the time limit up to three years.

Moreover, The Commissioner-IR must submit a monthly report of cases processed to the Chief Commissioner-IR by the seventh day of every month.

For further reading: [FBR](#)

## **2. Amendments in Sales Tax Rules, 2006**

The FBR vide **S.R.O. 1507 (1)/2024** dated 26th September, 2024 was pleased to direct that the further amendments shall be made from the 1st day of October, 2024 in the Sales Tax Rules, 2006. Inter alia, the most prominent amendments are as under:

### **Quote**

(e) Rule 33, the following shall be substituted, namely: -

"33. **Refund against goods supplied at zero-rate.**- Refund in respect of goods supplied at zero-rate shall be paid to the extent of input tax paid on purchases or imports that are actually consumed in such goods as supplied."

(g) in Chapter V-A, in the heading for the words "REFUND TO FIVE EXPORT ORIENTED SECTORS", the words REFUND TO EXPORTERS" shall be substituted:

(h) in rule 39B.

(i) for sub rule (1), the following shall be substituted, namely:

"This chapter shall apply to refund claims for the tax period from July, 2019 and onwards, as filed by the exporters of five exports oriented sectors, namely textile, carpets, -leather, sports goods and surgical instruments and also apply to refund claims filed from the 1st day of October, 2024 onwards by all the exporters on account of export of goods"; and

(ii) in sub rule (2), for the words aforesaid claimants" the expression \*sectors namely textile, carpets, leather, sports goods and surgical instruments" shall be substituted;

### **Unquote**

For further reading: [FBR](#)

### **3. Further Amendments in the Sales Tax Rules, 2006**

The FBR vide S.R.O. No.1513(I)/2024 dated 26th September, 2024 was pleased direct that the further amendments shall be made in the Sales Tax Rules, 2006. Major changes came forth in rule 150ZEL, wherein emphasis has been placed on digitizing the procedure for prize scheme for customers of integrated tier-1 retailer. Previously used expression "sms to number 9966", shall be substituted by "by WhatsApp number to be communicated through an order by the Board". In case of unverified invoice, the customer shall report the same through the application or WhatsApp number and in addition of providing their name, CNIC and mobile number, they will have to provide IBAN of the Customer, proof of digital payment, picture of the unverified invoice, and GPS Tagged picture of the business premises that has issued unverified invoice. Additionally, in case of unverified invoice, an alert shall be generated in the IRIS login of the Commissioner Inland Revenue and he shall authenticate the unverified invoice to establish the entitlement or otherwise of the customer for the prize. For further insight: [FBR](#)

## **D. SALES TAX CIRCULARS**

### **1. Extension of Time for Biometric Re-Verification**

The FBR vide Sales Tax Circular No.04 of 2024/HR-Operations dated 05th September, 2024 was pleased to extend biometric time till by the 30th September, 2024.

For further information: [FBR](#)

### **2. Standard Operating Procedure for Disposal of Cases of Condonation of Time Limit under Section 74 of the Sales Tax Act, 1990**

The FBR vide Sales Tax Circular No. 05 of 2024/HR-Operations dated 16th September, 2024 was please to provide clarity for purposes of disposal of requests for condonation of time limit under section 74 of the Sales Tax Act, 1990. The registered person shall apply to the Commissioner-IR having jurisdiction for extension of time or period specifying the grounds for delay in terms of SR0.1444(1)/2024 dated 12.09.2024.

Further, where condonation beyond three years is involved, the Commissioner-IR concerned, , shall send his categorical recommendation to the Board. The Commissioner-IR concerned shall forward his recommendation to the Board within fifteen working days of the receipt of the application where the application is received in RTO/CTO/MTO/LTO, wherein the Board shall examine the request and the recommendations and to communicate approval or rejection of the request to the Commissioner-IR as well as to the applicant.

For further details and format: [FBR](#)

# SALES TAX ON SERVICES NOTIFICATIONS

## A. SINDH REVENUE BOARD (SRB)

### 1. Appointment in SRB

The SRB vide notification No.SRB-OPS/T&P/53/2024 dated 4th September, 2024 was pleased to appoint Mr. Aadil Khan Jakhro as Assistant Commissioner of the SRB. Subsequently, the SRB vide its notification No.SRB-OPS/T&P/54/2024 dated 4th September 2024 directed that the following further amendments shall be made in its notification No.SRB-OPS/T&P/33/2024 dated 5th July wherein Mr. Aadil Khan Jakhro shall be added as S. No 54A. For further reading: [SRB](#) [SRB](#)

### 2. Correction in Previous Notification

The SRB vide notification No.SRB-OPS/T&P/55/2024 dated 9th September, 2024 was pleased to direct that following correction shall be made in its notification No.SRB-OPS/T&P/35/2024 dated 10th July, 2024. In the preamble of the aforesaid notification, "notification SRB-3-4/30/2022 dated 5th August, 2022" to be read as "notification No.SRB-OPS/T&P/33/2024 5th July,2024".

For further reading: [SRB](#)

### 3. Appointment in SRB

The SRB vide notification No.SRB-OPS/T&P/56/2024 dated 26th September, 2024 directed that the following further amendments shall be made in its notification No.SRB-OPS/T&P/33/2024 dated 5th July wherein Mr. Syed Arsalan Answer Shah shall be added as S. No 54B.

For further reading: [SRB](#)

### 4. Amendments in Previous Notification

The SRB vide notification No. SRB-3-4/57/2024 dated 30th September, 2024 was s pleased to direct that the following amendments shall be made in its notification No. SRB-3-4/28/2023 dated the 9th June, 2023.

- For the words "which are directly received or procured by the Health Department, Sindh and are also funded by way of the grant provided by the Japan International Cooperation Agency (JICA)", the words "and are used" shall be substituted.
- For clause (a), the following shall be substituted:- "(a) the services are received or procured from a contractor as is appointed by the Health Department, Sindh and the sub-contractors thereof as are approved by the Health Department, Sindh provided that such a contractor and the sub-contractors are duly registered with the Board in terms of sections 24, 24A or 248 of the Act and are also active taxpayers in terms of the provisions of section 2(1A) of the Act and provided further that the benefits of the notification shall not apply in case of persons



(service providers) not actually registered on or before the date of provision of services in terms of the Proviso to clause (71) of section 2 of the Act.”

- For clause (b), the following sub-clauses shall be substituted:- “(b) the service provider (i.e. the contractor) shall issue the prescribed tax invoice in terms of sub-rule (1) of rule 29 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter called “the 2011-Rules”) showing “Secretary, Health Department, Sindh” in the column “name of the service recipient”, showing correct description and tariff heading of the service in the column “Description, tariff heading and other details of the service provided”, showing “Exempt” in the column “Rate of Sindh sales tax” and showing “NIL” in the column “Amount of Sindh sales tax” and also quoting the number & date of this exemption notification on such invoices.”
- For the CERTIFICATE, the new CERTIFICATE shall be substituted.

For further reading: [SRB](#)

## **B. PUNJAB REVENUE AUTHORITY (PRA)**

### **1. Extension in Payment of Punjab Sales Tax**

The PRA, vide Notification No. PRA/Orders.06/2023/466, dated 16th September 2024 had extended the due date of payment of Punjab Sales tax for the period of August, 2024 till 23rd September 2024.

For further reading: [PRA](#)

### **2. Extension in filing of Sales Tax Return**

The PRA, vide Notification No. PRA/Orders.06/2023/465, dated 11th September 2024 had extended the due date of filing of Sales tax return/withholding statements for the period of August, 2024 till 27th September 2024. For further details: [PRA](#)

## **C. KHYBER PAKHTUNKHWA REVENUE AUTHORITY (KPRA)**

### **3. The Khyber Pakhtunkhwa Sales Tax Special Procedure (Tax on Specified Services) Regulations, 2024**

The KPRA, vide notification No.KPRA/ADMN/REG/2024/604 dated 3rd September was pleased to make the following regulation, namely: The Khyber Pakhtunkhwa Sales Tax Special Procedure (Tax on Specified Services) Regulations, 2024. The regulation shall apply in relation to collection

and payment of sales tax on the specified services for which recipient of the service, based in the Province, makes payments in relation to any of such specified service through a collection agent, by using any mean for transfer of amount for consideration to the service provider not resident in Pakistan. The applicable tax rate under the Second Schedule on specified services is reproduced in the table below:

S.No	Entry No. of Second Schedule	Description of the Taxable Service.	Rate of Tax
01	6	Advertisement services for which payment is made through a collection agent by using any mean for transfer of payments to any service provider not resident in Pakistan	10%
02	10	Franchise services either on giving or on receiving ends including royalties or similar financial benefits arising out of intellectual property rights or other factors of business good will, market standing, popularity, image or reputation etc.	15%
03	15	Digital or IT-based services in whatever form or manner or under whatever arrangement.	2%
04	19(g)	Software or IT-based system development 5% or 15% as or management or similar other such fields. the case may be	
05	31	Visa processing or visa acquisition services including advisory or consultancy services for foreign education or migration provided by persons in their private business or professional capacity	15%
06	32	Valuation or assessment services including competency and eligibility testing services and services involving written tests with or without interviews for job or work recruitment or selection for any other purposes like British Council, ACCA, Cambridge University, University of London and others charging amounts for exam and other fee including the fee on TOEFL and IELTS, ICAP, FRCS, FRSM, FRCPS and ICAEW etc	5%
07	42	Online Market Place (OMP) including online platform or portal services by whatever name called (other than ride-hailing or ride-hail services).	2%

For complete insight: [KPRA](#)

#### 4. Approval of Request of Registered Persons Opting to Pay Sales Tax at a Standard Rate Instead of Reduced Rate.

The KPRA, vide notification No.KPRA/ADMIN/MC/2024/618-22 informed that the Management Committee has approved the request of certain registered person opting to pay sales tax at a standard rate of 15% instead of reduced rate and take input tax adjustment as admissible under Khyber Pakhtunkhwa Sales Tax on Services Act, 2022. For further details: [KPRA](#)

# THE HON'BLE ATIR, ISLAMABAD ANNULLED THE ASSESSMENT ORDER PASSED BY THE ASSESSING OFFICER EXCEEDING THE TIME-FRAME CITED UNDER SECTION 122(9) OF THE ITO.

## **Introduction:**

The Appellate Tribunal Inland Revenue, Islamabad ("ATIR") was moved by M/s Strengthening Participatory Organization Employees Contributory Provident Fund, Islamabad ("Appellant") in ITA No. 1197/IB/2024, against the impugned order passed by the Commissioner Inland Revenue, Zone-II, CTO, Islamabad ("Respondent"). The Appellant challenged the assessment order passed by the Respondent, which exceeded the time mentioned under section 122(9) of the Income Tax Ordinance, 2001 ("ITO").

## **Brief Facts of the Case:**

The Appellant, M/s Strengthening Participatory Organization Employees Contributory Provident Fund, was a company earning income from investments and related activities. The Respondent received information from the Directorate of Intelligence & Investigation ("IR") that the taxpayer's bank account showed credit entries amounting to Rs. 71,414,906/- for the tax year 2018. However, the declared income did not align with these bank credits. A show-cause notice was issued, and the taxpayer submitted a written response, claiming the account with the credited entries belonged to the employer of the company. However, no supporting documentation was provided by the Appellant. A notice requesting further clarification was issued by the Respondent, but no response or appearance was received. In the aftermath, the Respondent proceeded based on available information and data, and the deemed assessment under section 120 was amended under section 122(1) of the Ordinance.

The Appellant being aggrieved and dissatisfied with the order of the Respondent brought the matter before the Hon'ble ATIR, challenged the impugned order on several grounds.

## **Arguments by the Learned Counsel of Appellant:**

The Counsel of the Appellant argued that the Show Cause Notice was issued on December 27, 2021, and the amended Order was passed on June 26, 2024, which exceeded the 270 days period stipulated in Section 122(9) of the Ordinance. As a result, the order passed after this statutory period was illegal, void ab initio, and beyond the jurisdiction of authority. In support of this argument, the learned counsel cited the case of Collector of Sales Tax, Gujranwala & another vs. M/s Super Asia Mohammad Din Sons (Pvt.) Ltd. (2017 SCMR 1427)

The counsel further agitated that the bank account with credited entries belonged to the employer of M/s Strengthening Participatory Organization, supported by a bank certificate issued by UBL, F-11 Branch, Islamabad, and requested the appeal to be accepted.

### **Arguments by the Learned Counsel of Respondent:**

The learned Departmental Representative (DR) opposed the appeal without any solid arguments.

### **Decision of the Hon'ble ATIR:**

The Hon'ble ATIR declared the order passed by the Respondent as time-barred and unsustainable on merit, as it was not passed within the specified timeframe under Sub-section (9) of section 122 of the ITO, and therefore, the Respondent's order was annulled. The Hon'ble ATIR further maintained that in interpreting Section 122 of the ITO, we apply the principle of harmonious construction. The law dictates that fiscal laws should be interpreted in a way that ensures the most favorable interpretation prevails between two or more reasonable interpretations of their terms. The statute should be read as a whole, and all possible efforts should be made to apply and adhere to the rules of purposive and harmonious construction, so that the allegedly conflicting provisions can be reconciled and saved.

This case addressed a new interpretation issue in Section 122 of the ITO, which required a thorough understanding, and critical analysis of the context and scope of each provision. Therefore, the findings of the Hon'ble ATIR were bifurcated and decided in following parameters, and are as follows:

#### **1. Is the time limit specified in subsection (9) mandatory, and does it override the limitation provided in subsection (2) of this section?**

The Hon'ble ATIR held that the proviso to subsection (9) of Section 122 is mandatory but does not override the overarching time limitation set forth by subsection (2) of the same section. The substantive time limit is set at five years from the end of the financial year in which the original assessment order was issued, aiming to ensure finality in tax matters and protect taxpayers from indefinite uncertainty. The proviso to subsection (9) imposes an additional time limit of 180 days from the issuance of a show cause notice, extendable by up to 90 days under specified conditions, to ensure the amendment process is completed within a reasonable timeframe. The time limit cannot breach the overarching limit in subsection (2), as it acts as an absolute bar after which no amendment process can be initiated, continued, or concluded. Both the initiation and conclusion of the amendment must occur within five years as per subsection (2). The proviso to subsection (9) is mandatory for process execution, but does not extend or affect the initial five-year limit set by subsection (2).

**2. If an order is not passed within the time frame specified in subsection (9) of this section, would an order issued after this period be considered time-barred, even if the five-year period outlined in subsection (2) is still available?**

The Hon'ble ATIR ruled that if an order is not passed within the time frame specified in the proviso to subsection (9) of Section 122, it will be considered time-barred, even if the five-year period under subsection (2) is still available. The overarching time limit is five years from the end of the financial year in which the original assessment order was issued or treated as issued. The subservient time limit stipulates that the amended order must be passed within 180 days of the notice's issuance, with an additional 90 days allowed under specific conditions. If the commissioner fails to pass the amended assessment order within 180 days, it is considered time-barred. The five-year limit is irrelevant in this context, as it determines when the commissioner can initiate the amendment process. A breach of any of the time limits would nullify the entire amendment proceedings in the eye of law.

**3. If the above interpretation is accepted then whether the provision of section 122(4) would become redundant which provides that the original assessment order can be amended as many times as may be necessary.**

The Hon'ble Tribunal held that the interpretation of legal provisions is crucial to avoid redundancy and maintain coherence within the statute. The provisions of Section 122 allow the Commissioner to amend an assessment order multiple times within specified time limits, ensuring correction of new information or errors. The proviso to subsection (9) mandates that an amended order must be passed within 180 days of issuing a show cause notice, ensuring timely action. However, subsection (4) provides substantive authority to amend an order multiple times within certain periods, while the proviso to subsection (9) imposes a mandatory time limit to complete each specific amendment within a set period. To avoid redundancy, the mandatory time limit in the proviso to subsection (9) does not override or extend the overarching limits of subsection (4). The provisions do not become redundant under this interpretation, as they govern the frequency and timeframe of amendments and the promptness of completing any amendment.

**4. Once it is declared that the order is not passed within the time given in subsection (9) then how the further amendments be made?**

The Hon'ble ATIR critically evaluated that if an amended assessment order is not passed within the time frame set forth by subsection (9), that specific amendment process shall be considered time-barred and the Commissioner cannot finalize it. However, further amendments can be made under subsection (4) as long as they are initiated within the time limits and comply with other requirements, such as issuing a new show cause notice. This interpretation maintains the integrity of both provisions, ensuring due process and timely action.

**5. If a show cause notice is issued for instance just five days before the end of the five years, did the Commissioner make the order under subsection (9) within the prescribed timeframe?**

It was held that if a show cause notice is issued five days before the five-year limit expires, the Commissioner has only five days to issue an amended assessment order. The 180-days period provided in the proviso does not extend the limit set by subsection (2). Therefore, the order must be completed within the remaining days before the five-year limit expires. If the Commissioner fails to issue the order within five days, it would be considered time-barred. This strict interpretation ensures amendments are made within the allowed substantive period, promoting certainty and finality in tax matters.

**THE HON'BLE SHC DIRECTED THE FBR TO WITHDRAW RECOVERY NOTICES ISSUED TO SOES AS THERE IS NO OTHER LEGAL REMEDY AVAILABLE EXCEPT FOR FORMING ALTERNATE DISPUTE RESOLUTION COMMITTEES.**

**INTRODUCTION:**

The Sindh High Court ("SHC") was moved by Trading Corporation of Pakistan Private Limited ("Petitioner") in Constitution Petitions bearing No. 3642 & 4059 of 2024 respectively, against the Commissioner Inland Revenue, Zone-II, LTO, Karachi, and others ("Respondents"). The Petitioner was aggrieved with the recovery proceedings initiated by the Respondent pursuant to passing of certain assessment orders by the department under the Income Tax Ordinance, 2001 ("ITO"), and the Sales Tax Act, 1990.

**BRIEF FACTS OF THE CASE:**

The Petitioner was a State Owned Enterprises ("SOE"), and was aggrieved of the impugned recovery notices issued by the Respondents, whereby the Respondent initiated the recovery proceedings pursuant to passing of certain assessment orders.

The Income Tax Ordinance, 2001, and the Sales Tax Act, 1990, have amended through the Finance Act, 2024, allowing SOE to approach the Federal Board of Revenue (FBR) for adverse orders passed by the Inland Revenue Department under both these fiscal laws. It was now mandatory for SOE to go for Alternate Dispute Resolution ("ADR"). This change has protected SOEs from legal proceedings and allowed them to appeal if the matter is not resolved by the Alternate Dispute Resolution Committee ("ADRC") within the stipulated period. However, the department's actions in the instant

matter, which involved coercive measures against Petitioner for recovery of the amount determined in the assessment orders, have been brought before the Court, despite the fact that SOEs cannot file an appeal or obtain restraining orders from an appropriate appellate authority. These coercive measures resultantly compelled the Petitioner to invoke the Constitutional jurisdiction of SHC conferred under Article 199 of the Constitution.

### **Arguments by the Learned Counsel of Appellant:**

The Counsel for the Petitioner argued and prayed the Hon'ble SHC to prevent the Respondents from taking coercive recovery measures against the Petitioner in respect of a default surcharge amount of Rs. 851,128,977/- imposed by Respondent. He also requested the court to direct the Respondents to decide and establish an Alternate Dispute Resolution Committee within the stipulated time.

### **Decision of the Hon'ble SHC:**

The Hon'ble SHC held that once the referral of the matter to ADRC is mandatory, then perhaps there should not be any question of adopting coercive measures for recovery of the amount so determined against an SOE. Moreover, when it has been provided in law that no appeal can be filed against adverse assessment orders, then an SOE cannot be compelled to make payment at the same time.

The Hon'ble SHC ruled that the Inland Revenue Department has realized that certain amendments have been carried out to the Income Tax Ordinance, 2001 and other Federal Fiscal Laws, requiring SOEs to apply to the Board for the creation of an Alternate Dispute Resolution Committee (ADRC) for dispute resolution and under obligation to withdraw any pending litigation.

It was further directed that the recovery notices issued to SOEs under these tax laws are also need to be withdrawn as there is no other legal remedy available except for forming alternative dispute resolution committees.

Moreover, the SRO 1290(I)/2024 dated 24.8.2024 has also been issued by FBR, whereby some draft rules pertaining to ADRC have been framed for enforcement of Section 134A, and have been published in the official gazette for calling objections and suggestions.

The SHC while disposing of both the Petitions directed the field formations to follow the FBR's directions and the Court's judgment in the Civil Aviation Authority case. If they fail, appropriate proceedings will be initiated against delinquent officials under relevant Service Laws, including notices under the Contempt of Court Ordinance, 2003, if a similar issue arises.

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