

# TAXPAK

## Newsletter by Tola Associates



**October 2024**





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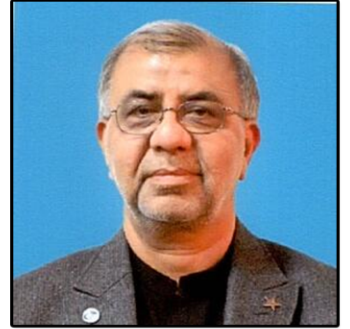
**Case Law:** The hon'ble atir, peshawar held that not submitting annex f and j in the sales tax returns will amount to a defective filing, and not a non-filing of sales tax return under the sales tax act, 1990.

**Topic of the Month:**  
RECTIFICATION UNDER SECTION 57 OF THE SALES TAX ACT, 1990

### 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, Peshawar ("ATIR") wherein the Hon'ble ATIR held that restaurant services provided by the appellant's restaurant are taxable under tariff heading 9801.2000 of Schedule-II to the Khyber Pakhtunkhwa Finance Act, 2013.

The other judgment discussed, was also passed by the Appellate Tribunal Inland Revenue, Peshawar wherein the Hon'ble ATIR held that not submitting Annex F and J in the sales tax returns will amount to a defective filing, and not a non-filing of sales tax return under the Sales Tax Act, 1990.

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 previously 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 Rule 231C of Income Tax Rules, 2002

The FBR, vide S.R.O. 1634(I)/2024, dated 10th October 2024 issued draft of certain further amendments in the Income Tax Rules, 2002. In rule 231C sub-rule (11), for the expression "(ii)", the expression "(iii)" shall be substituted; and in sub-rule (12), for the expression "(10)", the expression "(11)" shall be substituted. For further reading: [FBR](#)

### 2. Further Amendments in Rules of Active Taxpayers List

The FBR, vide S.R.O. 1638(I)2024, dated 18th October, 2024 issued further amendments in the Income Tax Rules, 2002. In Rule 81B, following amendments have been made:

- In sub-rule (1), for the expression "clauses (23A) and (35C) of section 2 and section 181,4", the expression "publishing active taxpayers' list, hereinafter referred to as ATL, under section 181A of the Ordinance" shall be substituted;
- For sub-rule (2), the following shall be substituted, namely: - "(2) A person's name shall be included in the ATL, if he files return of income tax for the latest tax year, by the due date specified in section 118 of the Ordinance or by the due date as extended under section 119 thereof by the Commissioner or by the due date as extended by the Board under section 214A thereof;
- the following new subrule shall be inserted, namely: - "(2A) In case a person files his income tax return for the latest tax year, after the due date or extended due date as mentioned in subrule (1), his name shall be included in the active taxpayer's list, if he pays surcharge as specified in proviso to clause (a) of sub-section (1) of section 182A of the Ordinance.";
- in sub-rule (3), for the expression "last day of February, next following", the words "on the next day after the due date or extended due date as mentioned in sub-rule (1)" shall be substituted;
- in sub-rule (4), for the expression "every Sunday at 24:00 hours, hereinafter referred to as updation date", the words "daily basis" shall be substituted;
- for sub-rule (5), the following shall be substituted, namely: - "(5) The name of a company or an association of persons, whose return is not due to be filed because of incorporation or formation of such company or association of persons after the 30th day of June relevant to the latest tax year, shall be included in the active taxpayers' list."; and

• after sub-rule (8), the following new sub-rule shall be added, namely: - "(9) A person's name, where such person has filed return in the Azad Jammu and Kashmir Central Board of Revenue or Gilgit Baltistan Council Board of Revenue, shall be included in the active taxpayers' list, if his temporary and permanent addresses are in the Azad Jammu and Kashmir or, as the case may be, in the Gilgit Baltistan." For further reading: [FBR](#)

### 3. DRAFT AMENDMENTS IN INLAND REVENUE REWARD RULES, 2021

The FBR, vide S.R.O. 1726(I)2024, dated 29th October, 2024. issued draft further amendments in the Inland Revenue Reward Rules, 2021, through which the FBR has sought to any service(s) performed as approved by the Prime Minister and directions are issued in this behalf, by the officers / persons governed by the aforesaid Rules, in the category of meritorious services, and that the reward for such service(s) shall be specified or directed by the Prime Minister.

For further reading: [FBR](#)

### 4. REVISION OF VALUE OF IMMOVABLE PROPERTIES

The FBR vide multiple SROs dated 29th October, 2024 have revalued immovable properties in several cities of Pakistan. Revaluation of certain areas in Karachi have been reproduced as under:

Karachi Property Valuation (Residential Open Plot)				
Area	2022 value per sq. yard	2024 value per sq. yard	Increase (PKR)	%
Askari (I,II, III, IV)	73,125	73,800	675	0.92%
Askari V	73,125	135,000	61,875	84.62%
Sindhi Muslim	73,125	135,000	61,875	84.62%
Bath Island	73,125	73,800	675	0.92%
DHA Phase 1-7	73,125	73,800	675	0.92%

## Karachi Property Valuation (Commercial Open Plot)

Area	2022 value per sq. yard	2024 value per sq. yard	Increase (PKR)	%
Askari (I,II, III, IV)	180,000	180,000	-	0.00%
Askari V	180,000	216,000	36,000	20.00%
Sindhi Muslim	123,750	216,000	92,250	74.55%
Bath Island	106,875	108,000	1,125	0.91%
DHA Phase 1-7	160,000	162,000	2,000	1.25%

## Karachi Property Valuation (Residential Built up property)

Area	2022 value per sq. yard	2024 value per sq. yard	Increase (PKR)	%
Askari (I,II, III, IV)	81,000	91,800	10,800	13.33%
Askari V	81,000	153,000	72,000	88.89%
Sindhi Muslim	81,000	153,000	72,000	88.89%
Bath Island	81,000	91,800	10,800	13.33%
DHA Phase 1-7	81,000	91,800	10,800	13.33%

## Lahore

Model Town Old	Increase, in Amount	Increase/ Decrease in %	Garhi Shahu	Increase, in Amount	Increase/ Decrease in %
<b>2024</b>	1,944,400	326,760	20%	<b>2024</b>	5,395,300
<b>2022</b>	1,617,640			<b>2022</b>	2,676,470

Canal Bank Rd in Gulberg Town	Increase, in Amount	Increase/ Decrease in %	Garhi Shahu	Increase, in Amount	Increase/ Decrease in %
<b>2024</b>	1,410,500	(1,383,610)	-49.50%	<b>2024</b>	989,400
<b>2022</b>	2,794,110			<b>2022</b>	852,940

Canal Bank Rd in Gulberg Town	Increase, in Amount	Increase/ Decrease in %
<b>2024</b>	10,205,880	No Change
<b>2022</b>	10,205,880	

Sukkur							
Queen Road	Increase, in Amount	Increase/Decrease in %	Race Course Road	Increase, in Amount	Increase/Decrease in %		
2024	1,680	160	11%	2024	3,360	(11,760)	-77.80%
2022	1,520			2022	15,120		
Canal Bank Rd in Gulberg Town	Increase, in Amount	Increase/Decrease in %	Garhi Shahu	Increase, in Amount	Increase/Decrease in %		
2024	1,260	(10,080)	-88.90%	2024	2,520	(10,080)	-80.00%
2022	11,340			2022	12,600		
Canal Bank Rd in Gulberg Town	Increase, in Amount	Increase/Decrease in %					
2024	1,680	(5,880)	-77.80%				
2022	7,560						

Peshawar							
Queen Road	Increase, in Amount	Increase/Decrease in %	Race Course Road	Increase, in Amount	Increase/Decrease in %		
2024	1,287,500	37,500	3%	2024	7,698,629	(295,796)	-3.70%
2022	1,250,000			2022	7,994,425		
Canal Bank Rd in Gulberg Town	Increase, in Amount	Increase/Decrease in %	Garhi Shahu	Increase, in Amount	Increase/Decrease in %		
2024	2,311,200	311,200	15.60%	2024	151,582	20,411	15.60%
2022	2,000,000			2022	131,171		
Canal Bank Rd in Gulberg Town	Increase, in Amount	Increase/Decrease in %					
2024	7,514,546	1,011,821	15.60%				
2022	6,502,725						

Source: [Dawn](#)

For further insight:

- i) [Karachi - Revaluation of immovable property](#)
- ii) [Lahore - Revaluation of immovable property](#)
- iii) [Peshawar - Revaluation of immovable property](#)
- iv) [Sukkur - Revaluation of immovable property](#)

## B. INCOME TAX CIRCULARS

### 1. Extension in Date of Filing of Income Tax Returns

The FBR vide circular NO. 03 OF 2024-25 dated 14th October, 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 31st, 2024. For further reading: [FBR](#)

## C. SALES TAX NOTIFICATIONS

### 1. Fixation of Value of Steel Products for Sales Tax Purpose

The FBR, vide S.R.O. 1636 (1)/2024, dated 17th October, 2024 is pleased to hereby re-fix the minimum value of supply of locally produced steel goods, for the purpose of payment of sales tax on ad valorem basis, at the rate as applicable to and specified in sub-section (1) of section 3 of the said Sales Tax Act, 1990, namely –

**(Per Metric Ton)**

Sr. No.	Goods	Value
1.	Steel bars and other long profiles	Rs. 205,000/-
2.	Steel Billets	Rs. 175,000/-
3.	Steel Ingots/bala	Rs. 160,000/-
4.	Ship plates	Rs. 154,000/-

In case the value at which supply of the aforesaid products made is higher than the value fixed herein, the sales tax shall be charged on such higher value.

For further reading: [FBR](#)

### 2. Enhance Rate of Sales Tax in respect of imported and local supply of tractors

The FBR, vide S.R.O. 1643(1)/2024, dated 23rd October, 2024 has enhanced the rate of sales tax by the Federal Government in respect of imported and local supply of tractors under PCT headings 8701.9220 and 8701.9320 and under S. No. 86 of Table-1 of the Eighth Schedule to the Sales Tax Act, 1990 from ten per cent to fourteen per cent, respectively. For further reading: [FBR](#)



### **3. Rescind its Notification no S.R.O 563(I)/2022 dated 29.04.2022**

The FBR vide S.R.O. No.1644(I)/2024 dated 23rd October, 2024 is pleased to rescind its Notification No. S.R.O. 563(I)/2022, dated the 29th April, 2022. Through the earlier SRO (now rescinded), the FBR had added Rules 39O to 39Z in the Sales Tax Rules 2002 which pertained to Refund to Agricultural Tractor Manufacturers. For further reading: [FBR](#)

## **Sales Tax on Services Notifications**

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

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

The PRA, vide Notification No. PRA/Orders.06/2023/473, dated 18th October, 2024 has extended the due date of filing of Sales tax return/withholding statements for the period of August, 2024 till 25th October, 2024. For further reading: [PRA](#)

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

#### **1. Clarification Regarding KP STS on Remuneration paid to Examiners, Invigilating Inspectors, Paper Setter, Checker ETC.**

The KPRA, vide Clarification No. KPRA/Clarifications/2024/926-35 dated 10th October, 2024 was pleased to clarify that institutions fail to deduct/withheld sales tax on services on Remuneration paid to Examiners, Invigilating Inspectors, Paper Setters, Checkers, Coder/Decoder, Resident inspectors/practical Laboratories etc under the Sales Tax on Services under the Khyber Pakhtunkhwa Sales Tax on Services Act, 2022 ("KPSTS" or "the Act"). The KPRA further clarified that the services of paper marking, paper checking, coding decoding, dispatch of answer book, paper setting, scrutiny and tabulation of computerized entries, inspectors/supervisors, are taxable at a rate of 5% as per entry No.32 of the Second Schedule of the KPSTS. For complete insight: [KPRA](#)

#### **2. Request for Refund in Respect of applicability of 2% Sales Tax on Market Rate System 2019/20.**

The KPRA, vide clarification No. KPRA/Clarifications/2024/932-25 dated 10th October, 2024 was pleased to clarify that the exemption available under Serial No. 14 of the Second Schedule to Khyber Pakhtunkhwa Sales Tax on Services Act, 2022 is not extended to the projects initiated after 30-06-2021. For complete insight: [KPRA](#)

### **3. Clarification of Doubt related to withholding/deduction of KP STS from Payment made for government funded developmental work based on MRS-2020**

The KPRA, vide Clarification No. KPRA/Clarifications/2024/988-89, dated 11th October, 2024 was pleased to clarify that the exemption available under Serial No. 14 Of the Second Schedule to Khyber Pakhtunkhwa Sales Tax on Services Act 2023 is available only to ADP funded projects initiated or completed before 30 June 2021 and PSDP funded project as were undertaken and completed before 30th June, 2021.. For further reading: [KPRA](#)

### **4. Clarification Regarding Deduction of KP STS on Contracts Bills**

The KPRA, vide clarification No. KPRA/Clarifications/2024/990-9 dated 10th October, 2024 was pleased to clarify that Construction Services and allied or ancillary profession/Services including repair and maintenance provided to Government funded construction projects including ADP/PSDP funded projects are taxable @2% as per entry No. 14 Second Schedule of Khyber Pakhtunkhwa Sales Tax on Service Act. 2022.

Further, only in case of construction services as per Serial No. 14 of the Second Schedule to Khyber Pakhtunkhwa Sales Tax on Services Act, 2022, projects initiated or under taken under Government's Annual Development Programme (ADP) provided either such projects have been initiated or completed on or before 30\* June, 2021 or payments whether full or in part, in respect thereof have been made on or before the said date, shall be exempted from Sales Tax on Services subject to the condition that the exemption so allowed under the pertinent part shall not be construed or interpreted in any manner to claim or take any refund, waiver, dispensation or relief of tax already deposited, paid or recovered (including already withheld or deducted but not deposited or paid) on or before 30th June 2021 on any ground whatsoever, For further insight: [KPRA](#)

### **5. Clarification of Provincial Sales Tax (PST) paid on services.**

The KPRA, vide Clarification No. KPRA/WHA/2024/1014-17 dated 16th October, 2024 was pleased to clarify that Government of Khyber Pakhtunkhwa revised the rate of Sales Tax on Services in the Second Schedule of Khyber Pakhtunkhwa Sales Tax on Services Act, 2022 through Khyber Pakhtunkhwa Finance Act, 2024. In case of auto-workshop, if repair and maintenance services are procured from authorized automobile dealers, Sales Tax on Services will be applicable on gross value @ 10% as per entry No. 9 of Second Schedule Kyber Pakhtunkhwa Sales Tax on Services Act, 2022. However, if the said services are procured from Corporate (Company) automobile dealers, Sales Tax or Services will be applicable on gross value @15% as per entry No, 9 of Second Schedule Kyber Pakhtunkhwa Sales Tax on Services Act, 2022. For further reading: [KPRA](#)

# CORPORATE NOTIFICATIONS

## A. SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN (SECP)

### 1. Amendment to the Fourth Schedule to the Companies Act, 2017

The SECP, vide S.R.O.1511(I)/2024, dated 19th September, 2024 was pleased to amend the Fourth Schedule, whereby in PART I of the Fourth Schedule, in clause VI, sub-clause (10) shall be omitted. For further reading: [SECP](#)

### 2. Amendment to the Code of Corporate Governance for Insurers, 2016

The SECP, vide S.R.O.1586 (I)/2024, dated 1st October, 2024 was pleased to notify the amendment to the Code of Corporate Governance for Insurers, 2016, the same having been previously published for eliciting public comments vide S.R.O 1087(I)/2024 dated July 8, 2024.

In the aforesaid Code, in clause (xxi), after the existing proviso, the following new proviso shall be inserted:

“Provided further that a person, being a Fellow or Associate member of the Casualty Actuarial Society or the Institute of Actuaries in England or Society of Actuaries in the United States of America and has at least five (5) years of managerial experience in the fields of audit or accounting or in managing financial or corporate affairs functions of an insurer, shall also be eligible to be appointed as the Chief Financial Officer of an insurer.”

For further reading: [SECP](#)

**CASE LAW :THE HON'BLE ATIR, PESHAWAR HELD THAT RESTAURANT SERVICES PROVIDED BY THE APPELLANT'S RESTAURANT ARE TAXABLE UNDER TARIFF HEADING 9801.2000 OF SCHEDULE-II TO THE KHYBER PAKHTUNKHWA FINANCE ACT, 2013.**

### Introduction:

The Appellate Tribunal Inland Revenue, Peshawar (“ATIR”) was moved by M/s Four Season Fast Food, Peshawar (“Appellant”) in STA No. 122/PB/2020, against the impugned order passed by the

Commissioner Inland Revenue, Unit-22, RTO, Peshawar and the Commissioner Appeals (“Respondents”). The Appellant challenged the assessment order passed by the Respondent, which raised a sales tax demand under section 11 of the Sales Tax Act, 1990 (“STA” or “the Act”).

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

The Appellant, M/s Four Season Fast Food, was registered as a **restaurant** under the Sales Tax Registration No. 0501210004473. It was alleged that the Appellant fell under the category of a manufacturer of goods legally obligated to file sales tax returns for the periods from July 2018 to June 2019. However, the appellant allegedly failed to submit these returns, violating Section 26(1) of the Sales Tax Act, 1990 (“the Act”). As a result, a show cause notice was issued, proposing a penalty of Rs. 5,000 for each month of non-compliance under Section 33(1) of the Act. In response, the appellant submitted a written reply, but the Assessing Officer was unsatisfied with the explanation. Consequently, the assessing officer issued Assessment Order No. 99/2020 dated 30.06.2020 under Section 11(1) of the Act, raising a sales tax demand of Rs. 60,000 for the appellant's failure to file the required tax returns in violation of Section 26(1) of the Act. The Appellant, dissatisfied with the Assessment Order, filed an appeal before the Commissioner Inland Revenue (Appeals), who dismissed the appeal through Order in Appeal No. 123 of 2020 dated 20-10-2020.

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.

### **Issues:**

- Whether the food prepared and served in restaurants to customers qualifies as a good or a service;
- Whether the sales tax demand raised was lawful and valid.

### **Decision of the Hon’ble ATIR:**

The Hon’ble ATIR declared the penalty imposed by the assessing officer under the Sales Tax Act, 1990, is unlawful, void from the outset, and beyond their jurisdiction. As a result, the decisions made by the lower authorities were annulled and the appellant appeal was accepted.

It was further concluded that the services provided by the appellant's restaurant are taxable under tariff heading 9801.2000 of Schedule-II to the Khyber Pakhtunkhwa Finance Act, 2013 (“2013 Act”). Therefore, restaurant services fall under the jurisdiction of KPK Province, and the Federation has no authority to levy taxes on them.

This case provides clarification as to categories under Pakistan Customs Tariff. Prepared foods are classified as goods under various headings of the Pakistan Customs Tariff (PCT) in Chapter 21 (Miscellaneous Edible Preparations) of the First Schedule to the Customs Act, 1969 bearing tariff heading 21.06.

The Hon'ble ATIR held that the tariff heading 9801.2000 (First Schedule to the Customs Act; and Schedule-II to the Khyber Pakhtunkhwa Finance Act, 2013) titled as "Services provided or rendered by restaurants," should take precedence over headings 21.04 ("Soup or broth") and 21.06 ("Food preparations not elsewhere specified or included"), as it provides a more specific description and is numerically the last of the three headings.

## **THE HON'BLE ATIR, PESHAWAR HELD THAT NOT SUBMITTING ANNEX F AND J IN THE SALES TAX RETURNS WILL AMOUNT TO A DEFECTIVE FILING, AND NOT A NON-FILING OF SALES TAX RETURN UNDER THE SALES TAX ACT, 1990.**

### **INTRODUCTION:**

The Appellate Tribunal Inland Revenue, Peshawar ("ATIR") was moved by M/s Badar Enterprise ("Appellant") in STA No. 101/PB/202 along with a Condonation Application, against the impugned order passed by the Commissioner Inland Revenue, Mardan Zone, RTO, Peshawar ("Respondent"). The Appellant challenged the assessment order passed by the Respondent.

### **BRIEF FACTS OF THE CASE:**

The Appellant, M/s, Badar Enterprise is a registered Association of Persons (AOP) under the Partnership Act, 1932, operates in the business of juice manufacturing. The Respondent was issued a show cause notice following a desk audit for the tax year 2018 (July 1, 2017, to June 30, 2018), without prior intimation to the appellant, citing a few discrepancies. Some observations were upheld despite the appellant's defense, and Order No. 20/2020 dated 11.08.2020 was passed. Dissatisfied with this decision, an appeal was subsequently filed by the appellant where appellant requested a thorough reconciliation of the records regarding these observations. After conducting a detailed review, the Commissioner Appeals IR vacated all observations except for the non-filing of Annex-F and Annex-J with the Sales Tax return, for which a penalty of Rs. 5,000 per return was imposed in Order In Appeal No. 251/2020 dated March 8, 2021.

The Appellant being aggrieved and dissatisfied with the order of the Respondent filed an appeal along with an MA (Condonation) and brought the matter before the Hon'ble ATIR, challenging the impugned order on several grounds.

## **KEY POINTS THAT WERE CONSIDERED BY THE HON'BLE ATIR:**

### **1. PROVISION'S SCOPE:**

The penalty provision described in Serial No.1 under column (2) of the Table to section 33 of the Sales Tax Act, 1990 which penalizes the failure to furnish a return within the due date. The penalty is primarily concerned with the non-filing of the return and is silent about the incompleteness or omission of specific annexures or schedules like Annex-F and Annex-J.

### **2. ANNEX-F AND ANNEX-J:**

Annex-F typically relates to the sales tax or VAT reporting of input tax credits, while Annex-J is used for output tax reporting or other details. These annexures form an integral part of the tax return process and their non-filing could mean that the return is incomplete or defective.

### **3. IS ANNEX-F AND ANNEX-J PART OF "RETURN"?**

Whether failure to file Annex-F and Annex-J would amount to "non-filing of a return" depends on how the law defines a "return". The Sales Tax Act, 1990 itself does not explicitly state that a sales tax return is incomplete without specific annexures like Annex-F (for input tax details) and Annex-J (for output tax details). However, the relevant rules and procedures under the Sales Tax Rules, 2006, which operationalize the Act, do imply that these annexures are integral parts of the return.

## **ANALYSIS BY THE HON'BLE ATIR:**

### **1. THE INTENT OF THE PENALTY PROVISION:**

The Hon'ble ATIR held that penalty provision focuses on cases where the return is not filed at all by the due date and imposes penalties on persons who entirely fail to submit a return within the deadline. This provision is targeted to complete non-filing, rather than incomplete or defective filing.

## **2. Defective Filing versus Non-Filing:**

Additionally, it was held that the failure to submit Annex-F and Annex-J would likely be considered a defective filing rather than a non-filing. As a result, the penalty for non-filing may not apply. Reference was given to Section 120(3) of Income Tax Ordinance, 2001 which allows taxpayers to submit missing information (like annexures) within a specified period after filing the original return.

## **3. Justification of the Department's Action:**

The department imposed penalty for non-filing of the return simply because Annex F and Annex J were not submitted. This justification will not hold if the return is submitted in time.

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

The Hon'ble ATIR held that failure to submit Annex-F and Annex-J is to be regarded as a defective filing, not as a non-filing of the return. Hence, the imposition of penalty by the assessing officer in terms of Serial No.1 under column (2) of the Table to section 33 of the Sales Tax Act, 1990 for non-filing is not justified. The appeal of the appellant was accepted and the penalty imposed in terms of Serial No.1 under column (2) of the Table to section 33 of the Sales Tax Act, 1990 was hereby deleted.

## **TOPIC OF THE MONTH: RECTIFICATION UNDER SECTION 57 OF THE SALES TAX ACT, 1990**

Under The Sales Tax Act, 1990 ("TSTA" or "1990 Act"), a taxpayer is empowered by law to file an application for rectification of any mistake under Section 57 of the 1990 Act. The scope of rectification has evolved since enactment of the TSTA. The previously written scope was substituted vide the Finance Act 2013.

### **• LEGAL POSITION PRE-FINANCE ACT 2013 ("old law")**

Pre-Finance Act 2013, rectification could only be done or clerical or arithmetical errors in assessment, adjudication, orders or decisions, at any time, by the Officer of Inland Revenue who made the assessment, adjudication, orders or decisions or by his successor. A notice shall be provided to the registered person or the person affected by such correction.

### **• LEGAL POSITION POST-FINANCE ACT 2013 ("new law")**

The Finance Act 2013 introduced major changes in the scope of rectification. Pursuant to the amendment, Officer of Inland Revenue Commissioner, Commissioner (Appeals) or the Appellate Tribunal may, by their own accord or brought to their attention by a taxpayer, rectify any mistake apparent from the record, by either an order in writing or amend a previously passed order.

No order having an adverse effect on the taxpayer such as increasing an assessment, reducing a refund etc. shall be passed without giving the taxpayer a reasonable opportunity of being heard.

The time limit for rectification was expanded to allow for rectification within five years from the date of the order.

## CHANGES IN SCOPE OF RECTIFICATION

Pre-2013: The scope of Rectification was fairly narrow,. Only the Officer of Inland Revenue (including Commissioner, Commissioner (Appeals), Additional Commissioner etc.) and could rectify their orders, wherein the errors were confined to be arithmetical or clerical in nature.

Post-2013: The scope was broadened to include more complex errors and the time limit for rectification was extended to five years. The amendment extended the meaning of “mistake”. Pursuant to section 57, the Officer of Inland Revenue, Commissioner, Commissioner (Appeals) or the Appellate Tribunal can rectify “any mistake”. Although the scope has been enlarged, the precondition is that the mistake should be apparent on the record. However, the jurisprudence regarding rectification is developing.

In a recent case, **2023 PTD 1687**, the Hon’ble Lahore High Court held that where a plea that materially affects outcome of the case, was raised before the Hon’ble Tribunal, and the Hon’ble Tribunal failed to adjudicate the said plea, the said failure of the Tribunal to adjudicate upon the same was a mistake apparent from the record that was rectifiable under Section 57 of the Sales Tax Act 1990. The operating part of the judgement is reproduced as under:

*“11. It is evident from perusal of Paragraph No.4 of the order dated 02.06.2016 passed by the Tribunal that the respondent raised a categorical plea that 10% unadjusted input tax was available for adjustment in the very next tax period which, being a substantive right of the taxpayer, could not be denied. This being a substantial plea materially affecting outcome of the case i.e. determination of tax liability of the respondent, was required to be adjudicated upon and failure to do so by the Tribunal constituted a mistake obvious and apparent from the record that was rectifiable, which prompted the respondent to file an application on 30.08.2016 for rectification of the order dated 02.06.2016 under section 57 of the Act. It is manifest from perusal of the impugned order dated 14.12.2016 that the rectification application of the respondent has been allowed while recording valid reasons, the operative part whereof is reproduced herein below:...”*



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