

# Tax Review/Taxation

## Daily Alert Service

Huzaima & Ikram  
January 07, 2014

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dated January 07, 2014

Kind Regards,

**Huzaima Bukhari**  
Editor

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## Fiscal prudence: having no thoughts at all

*Editorial, Courtesy Business Recorder*

*Dated January 06, 2014*

**D**ubbed as a New Year's gift to the nation, Prime Minister Nawaz Sharif has rejected the summary sent by Oil and Gas Regulatory Authority (Ogra) to the Ministry of Finance, proposing an increase in the prices of petroleum products ranging between Rs 1.38 and Rs 3.60 per litre with effect from 1st January, 2014. According to the summary, the price of kerosene oil was to be increased by Rs 1.38 per litre, light diesel oil by Rs 1.80 per litre, petrol by Rs 2.91 per litre, HOBC by Rs 3.60 per litre, HSD by Rs 2.63 per litre and JP-I by Rs 2.74 per litre. In the working paper, Ogra had estimated ex-depot petrol price to be increased to Rs 115.67 per litre, high speed diesel to Rs 119.38 per litre, kerosene oil to Rs 109.38 per litre, light diesel oil to Rs 103.04 per litre, and HOBC to Rs 141.23 per litre. The prices of petroleum products were calculated to soar mainly because the country imports a major part of its fuel requirements from global markets where local currency's value against international currencies, including the US dollar, have gone down. A Petroleum Ministry official said that "the Prime Minister has rejected the proposal on increasing oil prices and the government would provide a subsidy worth Rs 5.36 billion during January, 2014, to maintain the prices of these products at the current level in a bid to avert further escalation in prices of essential commodities."

The decision of the Prime Minister to reject the summary of Ogra for an increase in the prices of oil products seems to be clearly motivated by political expediency but hardly makes any economic sense in the current economic situation, especially when all-out efforts are needed to be made to contain the overall fiscal deficit of the country, release financial resources of the banks for private sector credit requirements for productive purposes, and subdue inflationary pressures in the economy. Another worry for the policymakers could be the concern of the IMF for violation of the understanding to pass on the full impact of the increase in oil prices in the international market to domestic consumers. Prices of petroleum products during January, 2014, were obviously to be increased due largely to a sharp depreciation of the rupee against other currencies in the preceding period as stipulated under the formula. The refusal of the Prime Minister to increase the oil prices may not only annoy the Fund staff but could also set a bad precedent by raising the expectation of people and businessmen that the level of domestic prices of oil products could also be kept unchanged in future despite the rise in prices in the international market. In our view, Nawaz Sharif's decision could have been somewhat justified if the position of budget and current accounts had been satisfactory and there was enough fiscal space available to absorb the negative impact of the decision without raising inflationary expectations. However, the fact of the matter is that all these variables

have either deteriorated or not improved as projected during the year. Federal Board of Revenue, for instance, has managed to collect only Rs 1020 billion during the first half of 2013-14 as against the target of Rs 1090 billion, showing a shortfall of around Rs 70 billion. The shortfall would continue to be substantial even if FBR is able to add to the revenue collection figure by another Rs 10-20 billion after reconciling the final data. A major reason for low collection of revenues could be watering down or withdrawing some of the budget proposals under political pressure mounted by various vested groups. Keeping the prices of oil unchanged during the month of January, 2014, could only worsen the fiscal outcome. The current account deficit of the country which has already deteriorated by 175 percent during the first five months of FY14 as compared to the corresponding period last year could also increase further due to higher demand of oil products caused by comparatively lower domestic oil prices, depending, of course, on price elasticity of oil products in Pakistan. Another flaw of the present policy decision is the lack of understanding or a deliberate attempt to play to the gallery by the political leadership without realising the long-term consequences of their actions. The decision of keeping the prices of oil products unchanged, for instance, may neutralise the onslaught of certain political parties like that of Tehreek-e-Insaf on the inflation front to a certain extent, but the long-term effect on prices of a higher budget deficit is uglier due to its more pervasive inflationary impact on the lives of ordinary people, particularly the poor.

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## Judgment Writing

by  
Qaiser Javed Mian\*

“It is said that this play [i.e. the judgment writing] is the oldest surviving courtroom drama in world literature. Much of literature, as in life, deals with the tension between the [desire of] people to take justice into their own hands [take] revenge or engage in self-help as opposed to the processes of the law, which, importantly from our point of view, are determined by a fair trial and fair judgment” [albeit]<sup>1</sup>

In the state of growing litigation, backlog and insufficient research facilities, a good quality judgment has become a challenge of the day in the legal fraternity. A well written to the point judgment based on comprehensive analysis of facts and laws is not only an indication of the intellectual level of the judge but is also a reflection of the standard of the judicial system. In view of this author, the most important element of a good judgment is “CLARITY”. Clear thinking is the key to clear writing. When we speak of a “speaking judgment”, it entails clarity of mind of the judge. A speaking judgment exhibits two things:

I. It explains the decision to the parties concerned.

II. It makes available reasons for an appellate Court to consider.

A judgment should be a self contained document.<sup>2</sup> Simple, brief and clear is the best. Some judgments almost write themselves. The practice of writing lengthy judgment is not appreciated.<sup>3</sup> The judge should write to express not to impress. Only the material facts should be stated in a chronological order. What is required is a reasoned judgment and not reasons for the judgment.

The judgment formulates the decision the judge has made. It informs the parties exactly about what the Court orders them to do and how the decision shall be executed. Any vague formulation of an execution order could cause the parties to start a new dispute about the execution and the contents of the decision.

It is pertinent to point out that tone and attitude are extraneous to a balanced judgment. If the courtroom is allowed to vibrate with the heat generated outside it the adjudicatory process suffers and the search for truth is stifled.<sup>4</sup>

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<sup>1</sup> Justice Roslyn Atkinson, “Judgment Writing” (Delivered to Magistrates Conferences, gold Coast, March 21, 2002).

<sup>2</sup> see e.g. Balraj Taneja and another v. Sunil Madan and another, AIR 1999 SC 3381.

<sup>3</sup> See. e.g. Amina Ahmed Dossa vs. State of Maharashtra; AIR 2001 SC 656.

<sup>4</sup> see e.g. State “Delhi Administration” v. Laxman Kumar and others, 1986 Gr. L.j 155

Even if the criticism is reformatory, the words should be dignified and restrained.<sup>1</sup> Unbalanced language is out of place in a judicial adjudication.<sup>2</sup> The Indian Supreme Court disapproved the practice of passing adverse remarks against presiding judge of the Lower Court as it damages the judicial system as a whole<sup>3</sup>.

### CIVIL PROCEDURE CODE

#### SECTION 33

“The court, after the case has been heard, shall pronounce judgment, and on such judgment decree shall follow”.

#### ORDER XX RULE No.1.

(Quote) 1. “JUDGEMENT WHEN PRONOUNCED:–

On completing of evidence the court shall fix a date, not exceeding fifteen days, for hearing of arguments of parties.

2. The court shall after the case has been heard, pronounce judgment in open court, either at once or on some future day not exceeding thirty days, for which due notice shall be given to the parties or their advocates” (Unquote)

A judgment in other words is a statement given by the judge of the grounds of a decree or order u/s 2(9) C.P.C. which defines judgment, as “JUDGEMENT MEANS STATEMENT GIVEN BY THE JUDGE OF THE GROUNDS OF A DECREE OR ORDER”. The “order” has been defined in section 2(14) C.P.C. as “ORDER MEANS THE FORMAL EXPRESSION OF ANY DECISION OF A CIVIL COURT WHICH IS NOT A DECREE.”

Irrespective of whether it is an “ORDER” or a “DECREE” it must contain discussion of a question(s) at issue and reasons therefore. It must be precise, logical, clear and without creating confusion in the minds of the parties. There should be a statement of grounds of decision in a judgment. Appellate judgment which does not comply with the provision of **Order XLI Rule 31** is no judgment in the eye of law. A judgment which is duly written but not publicly announced is ineffective and further proceedings taken by the same court are held to be invalid<sup>4</sup> (**PLD 1962 SC 97**). The judgment can be pronounced at once or on some further day after hearing the arguments. Further day means within reasonable time.

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<sup>1</sup> see e.g. Alok Kumar Roy v. Dr. S.N. Sarma and another, AIR 1968 SC 453.

<sup>2</sup> see e.g. D.Macropollo and Co. (private) Ltd v. D. Macropollo and co. (Private) Ltd, Employees Union and others, AIR 1958 SC 1012.

<sup>3</sup> see e.g K.P.Tiwari v. State of M.P.1994 Cr L.j.1377.

<sup>4</sup> See PLD 1962 S.C. 97.

Where a party is not allowed to conclude its evidence, judgment is liable to be set aside. A decree falling short of the requirements of order XX C.P.C. with regard to its contents is not sustainable. In case of a compromise decree, the decree sheet should conform to compromise and not to the original entries in the plaint. A judgment is the one written, signed and pronounced as per Court-Rule 2 of the Lahore High Court Rules and Order Vol. 1 Chapter II-A which draws attention to the following directions:

1. The judgment should be written either in the language of the Court, or in English;
2. When a judgment is not written by the presiding officer with his hand, every page of such judgment shall be signed by him;
3. It should be pronounced in open Court after it has been written and signed;
4. It should be dated and signed in open Court at the time of being pronounced and when, once signed shall not afterwards be added or added to save as provided in Section 152 or on review;
5. If it is a judgment of any Court other than a Court of Small Causes, it should contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision;
6. If it is the judgment of a Court of Small Causes, it should contain the points for determination, the decision thereon and the reasons for such decision;
7. It should contain the direction of the court as to costs.

**General Features of a Judgment:**

1. Self contained
2. Unambiguous
3. Conveniently Intelligible
4. Lucid and capable of only one interpretation without guess or probabilities.
5. no vagueness or ambiguity
6. no possibility of double interpretation
7. no extraneous considerations
8. reasons (See General Clauses Act)

**JUDGMENTS ON JUDGMENT WRITING**

1. "Issues in civil proceedings are to be decided on preponderance of evidence. In case of word against word party on whom onus lay must fail"; See **case titled Allah din vs habib, cited as PLD 1982 SC 465**

2. "Limitation does not run where impugned order is passed without hearing and notice to a party whose presence was otherwise necessary"; See **case titled Mst Rehmat Bibi & others vs Pannu Khan and other cited as NLR 1982 SCJ 166.**
3. "Judgment passed without hearing and without informing the party of the existence of the ex-parte order is no judgment question of limitation does not arise against void order"; See **case titled Sayeed Nazir hasan vs settlement commissioner cited as PLD 1974 Lah 434. See also case titled Muhammad Ashraf etc. vs. Muhammad Usman etc. cited as (1973 SCMR 403;). Also see generally PLD 1971SC 61.**
4. "The requirements that orders of court ought to be publicly made and announced is not only a matter of accepted judicial procedure ,but invariably a requirement of law regulating the functioning of Civil and Criminal Courts"; See **case titled Lachmandas vs Central Govt cited as PLDI973 SC 379**
5. "Order appealed against found to be a nullity - Appellate Authority can entertain and decide on merit even a time barred appeal against a void order."; See case titled **Sayed Muhamad Alam vs Syed Mandi Hassan cited as (PLD 1970 Lah 6).See generally PLD 1971 Lah. 746 and PLD 1969 Lah.1039.**
6. "Mere observation in a case under Order 37 C.P.C based on Pronote while considering the grounds of leave on P.L.A that the defendant has not given any justification for grant of leave not considering the affidavit attached thereto , and asking the plaintiff to prove his case , the conclusion drawn by the trial judge was wrong. Judgment feel short of requirements of order **XX C.P.C**"; See **case titled Muhammad Yousaf vs Allah Yar cited as PLD 1987 LAH 101**
7. "Judgment would mean judicious determination of dispute between parties specifying grounds and substantial reasoning for arriving the particular decision. Judgment, held ought to be self contained, unambiguous, conveniently intelligible, lucid and capable of only one interpretation without leading for guess or probabilities with regard to matters sought to be determined. Proper or valid judgment would be devoid of apparent vagueness, ambiguity or possibility of different or double interpretation. **Bar of limitation for filing** appeal , against decrees passed in utter disregard of legal requirement viz recording of reasons for granting decree would not be applicable"; See **case titled Mistry Muhammad Hassan vs Haji Said Muhammad cited as 1986 CLC 1241 (Quetta).**
8. "The signing of judgment as envisaged **u/s 369of Cr.P.C** is signing in open court at the time of pronouncement of the judgment and not signing at the home .in the case, therefore, the simple writing and signing of the judgment was wholly ineffective and did not operate as a bar to further proceedings"; See **case titled Amin Sharif vs Syeeda Khatoon cited as PLD 1962 SC 97.**

9. "Order void ab initio- A nullity- such order does not require to be set aside in appeal or any other proceedings"; See case titled **Khuda Bakh vs Khusi Muhammad etc. cited as PLD 1976 SC 2008.**
10. "Order of a tribunal found to be without jurisdiction. All successive orders based upon it are illegal and liable to be quashed in writ jurisdiction".
11. "Judgment did not conform to the provisions of law as it was to be based on evidence in the case and **not other material or factor** was to be taken into consideration. Furthermore the relief had to follow findings on the issue and should have been consistent with those findings. Such a disposition of the matter could not qualify to be a judgment in law and was liable to be set aside"; See **case titled. Meaple Leaf Cement Factory Ltd vs Waryam etc cited as PLD 2006 LAH 506. Also see 2006 YLR 108.**
12. "Lack of issue -wise findings not fatal" See **case titled Umer Din vs. Ghazanfar AM cited as 1991 SCMR 1816; Also see generally 2006 SCMR 185; 2006 YLR 711; PLD 2007 PESH 14**
13. "However, issue-wise judgment from the original trial court"; See case titled **Habibullah vs Azmatullah cited as PLD 2007 SC 271. See also 2007 MLD 476.**
14. "Trial court while recording its findings on merit of the case did not further discuss the evidence. It is not a reasoned judgment under Order XX"; See **case titled. Amir Tufail vs Muhammad Sadiq etc cited as 2006 CLD 91; See also case titled Mst Yasmin Akhter vs Abdul Mateen Zahid cited as 2007 CLC 972. (Shariat Court AJ & K).**
15. "Issue wise discussion not mandatory for Appellate Court"; See **case titled Niamat Khan and others vs Hamzullah Khan etc cited as 2006 CLC 125; See also 2006 CLC 662**
16. "Even ex-party order/judgment is required to be a speaking order/judgment even if passed under **Order IX Rule 6.** If initial order was void, no limitation"; See **case titled. Wapda vs Mir khan Muhammad Khan Jamali cited as 2006 CLC 92(Quetta).**
17. "Mere reproduction of evidence by the Appellate Court did not mean that the evidence of the parties has been discussed or referred to, judgment revealed cursory and casual approach of Appellate Court to the case. Judgment suffered from non-reading of evidence on record .Trial court had acted illegally etc. Judgment of the appellant was set aside and case was remanded to the Appellate Court"; See **case titled. Sayed Zulfiqar Hussain Naqvi vs Sayed Gulzar Hussain Shah cited as 2005 YLR 2817.**
18. "In a pre-emption suit, parties themselves modified original decree. Supreme court accepted, agreed and modified the original decree in terms thereof;. See **case titled Muhammad Sadiq and others vs Taj and others cited as 2005 SCMR 1668.**

19. "Decree in suit for rendition of accounts - levy of stamp duty on such decree, scope, phrase any property" as used in section 2(15) of stamp act 1989 would include both types of moveable or immovable properties" See **case titled M/S Faisal Traders vs M/S Syngenta Pakistan Ltd cited as 2005 YLR 2503.**

20. "Where law provides for writing, announcing and signing a judgment that must be done in a way to get validity to the judgment" See **case titled Raja Muhammad Sarfraz Khan & others vs Noor Muhammad cited as 2007 SCMR 307.**

21. "Judgment written and signed after its pronouncement would be a mare irregularity"; See **case titled. Mst. Zohra Begam and others vs Muhammad Ismail cited as 2008 SCMR 143, Also see 2007 CLC 760.**

22. "Conclusion of Distt. Judge that trial Judge had recorded his judgment with pencil in his own hands comprising 33 pages and it was impossible that such a judgment could be written in 45 minutes and that too while Trial Judge (Senior Civil Judge) was in bathroom, upheld by the Supreme Court as unexceptionable"; See **case titled. MST Zohra Begam and others vs Muhammad Ismail cited as 2008 SCMR 143.**

23. "Constitutional jurisdiction of High Court, delayed pronouncement of judgment after 10 months of hearing arguments, proceedings involved civil rights, hence, considered as civil proceedings, Regardless of **whether jurisdiction exercised by High Court was original appellate or constitutional**, once proceeding before High Court were of civil nature ,the C.P.C would apply unless specifically excepted. Unreasonable delay of 10 months had caused prejudice. Bulk of documentary evidence going to the root of the case did not find mention in the High Court Judgment. Supreme Court converted Leave petition into appeal and remanded the case"; See **case titled . Muhammad Awais and others vs Fedration, cited as 2007 SCMR 1587.**

24. "Specific performance , Rescission of contract. Decree of the Court for specific performance of agreement is in the nature of preliminary decree and extension of the time for deposit of sale consideration - conveyance deed has to take place- during this period decree-contra continues to subsist-extension of the time is not an alteration or modification of a decree"; See **case titled. Tasneem Ismail and others vs M/S Wafi Associates and others cited as 2007 SCMR 1464**

25. "Contents of judgment and decree excepted from judicial officer that he would pass the speaking order to enable everyone to have an idea or the view which found favour with the presiding officer or such court or Tribunal- Judgment should contain concise statement of the case, points for determination which had been raised, the decision thereon reason for such decision judicial order must be speaking and meaningful by it self exhibiting that the court had applied its mind to the resolution of all the material issues"; See **case titled . Mollah Ejahar AM vs Govt Of East Pakistan and others cited as PLD 1970 SC 173, See also case titled**

**Muhammad Irshad and Others vs MST Hanifa Begum alias Bagi and others cited as PLD 2007 SC (AJ & K) 20.**

26. **TIME FOR PRONOUNCEMENT OF JUDGMENT** “Order XX, R.1 ,High Court Rules & Orders (Lahore) Vol .V Chap IV R. 5 -not only O. XX R.1 C.P.C or Rules 5 of the Chapter IV of the High Court Rules and Orders Vol V but also the fiscal statutes had no prescribed time for pronouncement of the judgment, nevertheless , it was desirable to deliver the judgment without inordinate delay so that the justice must not only be done by manifestly appear to be done”; **M.A.NO.338/L.B of 2003, 2005 PTD (TRIB) 318.**

27. “Ground in the Appellate Court, inter alia, that **Trail Court** was not legally competent to **decide four issues collectively** being against O XX R.5 C.P.C -held - no doubt Trial Court should have given **finding on each issue separately**, but where certain issue were linked with each other and where considered together, such consideration was not violative of O XX R. 5 C.P.C”; See **case titled MUHAMMAD AFZAL & OTHERS VS WALI MUHAMMAD** cited as **2004 CLC 658 AND case titled KARIM BUX & 2-OTHERS VS MANZOOR AHMAD ETC,** cited as **PLD 2005 (Kar) 50; Also see generally 2004 CLC 1438; 2004 CLC 370.**

28. “Service Tribunal mentioned in detail respective pleadings but had not resolved those points. No reason given in support of conclusion nor evaluation of documentary evidence made/discussed .It is no judgment in the eye of law”; **2004 PLC (C.S)843**

29. “Petitioner’s grievance was that the notified officer passed the order against them after the notified officer had been transferred. Notified officer was transferred on 12-1-1998 with immediate effect but he still heard the case on 13-1-1998and decided it on 16-1-1998. Contention that the order of transfer would have taken effect after the same has been published in the official Gazette Held- Notified officer should not have adjudicated the case because his transfer was with **immediate effect** on 12-1-1998. It’s **legal efficacy** was not dependent upon its publication in the Gazette as it took effect immediately”; See **case titled Barkat ali vs Addl Commissioner** cited as **2004 MLD 1633**

30. “Successor judge can pronounce judgment written by his predecessor-Transferred judge who heard the case **could complete the judgment which could have been announced by his successor.** If case had been heard by Court or presiding officer, such officer could pronounce judgment/order even if he had been transferred or promoted. Where a presiding officer had concluded the hearing of the matter before his transfer, such officer could decide the matter before relinquishing the charge. The ratio is that if the outgoing judge has already heard the case, he could decide the same”; See **case titled. Barkat Ali vs Addl Commissioner** cited as **2004 MLD 1633**

31. “Findings of the Rent Controller on the issue of default were given in a single sentence and did not discuss the accumulative effect of statement  
2014

of the tenant where he had explained reasons for non-tendering of the rent. Judgment was violative of O .XX irrespective that C.P.C did not apply in the rent matters”; See **case titled Mujib-ur- Rehman vs Zafar ali Khan cited as 2004 CLC 189 (B).**

32. “Trail Court failed to give issue wise findings- Appellate Court while maintaining the judgment did not form points for determination ignoring mandatory requirements of O. XLI R.31 C.P.C judgments & decrees of both the lower courts set aside” See **case titled MST Feroza vs Anjumman-e- Ittehad-e- Baluchan & others cited as 2004 YLR 1535 Kar.**

33. “Under Land Acquisition Act Section 23, failure of referee Court to give findings on issue of the time of possession from when the interest will be payable to them- Judgment suffered from non -decision on such issue-Case Remanded”; See case titled **M. Salim & 7-others vs Land Acquisition Collector, cited as 2004YLR 807 Lah.**

34. **COSTITUTIONAL PETITION**

“Member Board of Revenue, reserved the judgment/order and passed order after about ten months of hearing the case. Statutory obligation under Order XX Rule 1 C.P.C was to decide matters within thirty days of hearing the case. The order was not sustainable and was declared to be of no effect”; See **case titled. Muhammad Latif vs Member Board of Revenue/Chief Settlement Commissioner & others cited as 2003 CLC 1064 Lah.**

35. “Order XX , High Courts Rules & Orders Vol. 1 , Chapter 1, R.2 Correction in judgment except u/s 152 C.P.C or a review after announcement , when the court becomes “ functus officio”. Therefore “*correction*” was not sustainable in the eye of law”; See case titled **MIS Norrani Traders vs. Civil Aviation cited as 2001 YLR 2277 Kar. See also case titled, Pakistan Industrial Promoters vs Nawazish Ali Jafari cited as 2003 YLR 1277, Also see case titled Govt NWFP vs. Arsala Khan and others cited as 2003 CLC 1189 &PLD 2001 Pesh.47.**

36. “Judgment to be signed. Sending of the files to the office of the Court was a ministerial act and could not be determinative of the date of the signing the judgment”; See case titled **Mian Muhammad Shahbaz Sharif vs. Election Commission of Pakistan, cited as PLD 2003 Lah 646.**

37. “Necessary ingredients of the judgment explained”; See **case titled. Akhter Saeed vs. Azad Kasmir Government cited as PLD 2003 SC (AJ& K) 1; Also see 2002 CLC 4 Pesh.**

38. “Disposal of interconnected and interlinked issues would not cause any prejudice to a party”; See **case titled Umer Din vs. Ghazanfer ALI & OTHERS cited as 1991 SCMR 1816, See also case titled Aziz ullah Khan etc. vs. Gul Muhammad Khan cited as 2000 SCMR 1647and case titled Abdul Sattar vs. Bashir Ahmad etc. cited as 2004 CLC 370 Kar.**

39. "Trail court had dealt with the matter in a proper way and the omission to discuss the issue wise ratio had not resulted in injustice. High Court declined to interfere with the concurrent judgments below"; See **case titled Hazrat Ali Khan vs. Mir Wali Khan, cited as 2003 YLR 801 Pesh.**

40. "No need to specifically give the issue no or reference as long as the question in question i.e. the "limitation" was consciously dealt with"; See **case titled Mst Satto alias Sattan vs. Gaman, cited as 2003 CLC 456 Lah.**

41. "Decree must agree with judgment"; See case titled **Dilmeer vs. Rajab Ali & Others, cited as 2003 MLD 484 Lah.**

42. **Order XX Rule 1 (2) - CONTITUTION ART 254**

"Provisions of O.XX R. 1 (2) are directory in nature and not mandatory and do not provide for consequence in case it is not strictly adhered. High Court announced judgment after more than five months in violation of O.XX R .1 (2) C.P.C was in consequential having no material bearing on merits"; See **case titled. Jumma Khan & others vs. MST Bibi Zenaba & others cited as PLD 2002 SC 823. Also see 2002 CLC 1704.**

43. "Where no evidence was produced on the issue framed, the Courts below were left with no other option but to decide the same against the side on which onus of proof lay"; See **case titled . Aziz ullah khan vs. Gul Muhammad khan, cited as 2000 SCMR 1647.**

44. "Judgment, decree or order- Distinction"; See **case titled Sardar Muhammad Ibrahim Khan vs. Govt of AJ & K, cited as PLD 1990 SC (AJ & K) 23.**

**BASIC LAWS**

- (i) C.P.C Section 2 (9); 2(14); 33, order XX.
- (ii) General Clause Act
- (iii) High Court Rules & Orders (Vol. 1 Chapter II-A)

## **Jamaica**

### **Jamaica introduces employment tax credit**

In an effort to improve tax compliance and boost employment, the Jamaican government on January 01, 2014 started offering Employment Tax Credits (ETC) to unregulated companies and self-employed individuals when they compute their net income tax liability.

To qualify for the credit, eligible persons must file and pay their monthly payroll statutory deductions on time.

Director of Communications at Tax Administration Jamaica (TAJ), Meris Haughton, said the move targets entrepreneurs and business entities that are engaged in various trading or professional engagements and who may have had some difficulty in the past in filing taxes and paying on time.

She said that the amount of ETC that can be claimed for any one year of assessment will be equivalent to the total amount of payroll deductions and contributions for Education Tax, National Housing Trust (NHT), National Insurance Scheme (NIS) and Human, Employment and Resource Training (HEART), which have all been declared and paid on time for employees during that year.

The ETC will be restricted to 30 percent of the tax chargeable on the company's or trader's income. Additionally the ETC may not be claimed against any income tax chargeable on non-trading income, such as interest and dividend income. Such income will continue to be liable to tax at 25 percent.

The ETC is being introduced as part of the government's Fiscal Incentive regime. – *Courtesy tax-news.com*

## **Ireland**

### **Irish SMEs set out 2014 wish list**

Ireland needs a tax system that rewards work and entrepreneurship, the Small Firms Association (SFA) has said.

Publishing the SFA's end of year statement, chairman A.J. Noonan claimed that with the "right environment" small businesses could generate 20,000 Irish jobs in 2014.

There are currently around 200,000 small firms operating in the country. They employ 655,000 people, and an estimated 13,000 new businesses are set up each year.

According to Noonan: “Entrepreneurship is alive and well, but must be nurtured and developed with a renewed focus from both agencies and government.”

This is where changes to the tax system should come in. Ireland has one of the highest marginal tax rates in the Organization for Economic Cooperation and Development (OECD), at 55 percent. The OECD average stands at just 36 percent.

For Noonan, such high rates present “an obstacle for entrepreneurs and business start ups.” The social welfare system also creates problems, by failing to adequately incentivize a return to work before individuals lapse into long-term unemployment.

Noonan did not specify what tax reforms he wants to see implemented, but did propose a three point plan. It would make small firms and job creation the “leit motif” of Government policy, increase credit availability, and improve access to public procurement contracts.

He added: “If the Government puts the right policies in place, this vital sector will drive growth in the wider economy, more so than any other. The small business sector given the right economic conditions will generate the growth needed to create jobs and overcome our debt burden. Small businesses can lead the way in helping Ireland to recover faster and stronger.”

Last month, the Government unveiled its medium term economic strategy, designed to “point the way to a stable and prosperous future” in the wake of Ireland’s bailout exit. It hints that the Government may be able to achieve a combination of tax cuts and increased spending if revenue growth is reasonable. It will preserve the competitiveness of the tax regime, while continuing to fund tax incentives through the review and elimination or restriction of “overly generous, poorly targeted or otherwise unaffordable tax reliefs.”

The SFA criticised the plan at the time for failing to place small businesses at the heart of economic policy. – *Courtesy tax-news.com*

## **Uzbekistan**

### **Uzbekistan increases vehicle fuel taxes**

Uzbekistan has raised the tax on the consumption of gasoline and diesel fuel for motor vehicles by UZS25 (USD0.01) to UZS265 per liter, effective from January 01, 2014.

The official price of one liter of AI-80 gasoline is now UZS1,670 (up from UZS1,645), while one liter of AI-91 gasoline costs UZS1,835 (up from UZS1,810), and one liter of AI-95 gasoline costs UZS2,020 (up from UZS1,995).

In addition the consumption tax for liquefied natural gas for motor vehicles was hiked from UZS165 to UZS180 per liter and the rate for compressed natural gas was lifted from UZS200 to UZS220 per cubic meter.

The country has been suffering from a shortage of fuel for vehicles due to problems affecting refinery capacities.

In 2013 the government raised the tax on fuel consumption by UZS40. – *Courtesy tax-news.com*

### **MPs tax details to be made public by Feb 15**

Amid a firestorm over the tax returns filed by elected public representatives, Finance Minister Ishaq Dar told the Senate on Monday that tax details of all tax payers, including parliamentarians, will be made public by February 15.

Earlier, taxpayers were found understating their assets and incomes in an attempt to cheat the Federal Bureau of Revenue and causing losses to the exchequer. He said that the Federal Board of Revenue has been directed to issue national tax numbers to all the parliamentarians by the end January.

Dar assured that all parliamentarians are paying tax as it is deducted from their salaries directly. He said the tax details of all the parliamentarians were also collected by the Election Commission of Pakistan at the time of the elections.

#### **SECURITY SITUATION:**

Earlier, the House started a discussion on a motion moved by Mian Raza Rabbani regarding the current political and security situation in the country with particular reference to Balochistan, FATA and Rawalpindi.

During the discussion, Farhatullah Babar said that security establishment must be brought under the oversight of the parliament and structural reforms in this regard should be completed at the earliest. He said better management of the borders is also imperative to control the movement of the miscreants.

Abdul Rauf said that it is the responsibility of the elected representatives of all the political parties to work hard for provision of better security to the masses.

Mushahidullah Khan also said that the government is making efforts to improve the law and order situation in the country. He said due to the measures of the government the law and order situation has improved in Karachi and improving in rest of the country.

Khan said that it is first time in history that the government has shown courage to try a dictator. He stated that Pervez Musharraf's case is sub-judice and the court will decide his fate.

Later on, the House started a discussion on a motion moved by Haji Mohammad Adeel regarding the situation arising out of non-shifting of headquarters of the State Bank of Pakistan from Karachi to Islamabad.

Initiating the debate, Haji said that after the creation of Pakistan the capital of the country was in Karachi and as a result headquarters of all the Federal institutions and departments were in Karachi.

He said that after the shifting of the Capital from Karachi to Islamabad, the headquarters of almost all the national institutions were shifted to the new capital. Due to the negligence, the headquarters of the State Bank of Pakistan (SBP) could not be shifted to Islamabad.

He said as a national institution, the SBP should be shifted to the capital to boost the economy of the country.

Colonel Tahir Hussain Mashhadi said that Karachi is the business hub of the country; therefore, headquarters of SBP should not be shifted to the federal capital. – *Courtesy Pakistan Today*

### **FBR to publish tax directory of MPs**

The Federal Board of Revenue has decided to publish a tax directory of the parliamentarians to reveal their tax details, including tax payments. Sources told here on Monday that the Ministry of Finance has directed the FBR to publish a tax directory of the parliamentarians. This is for the first time that tax authorities would publish the details of the tax payments of the parliamentarians. The tax directory would be made public on the FBR official website. – *Courtesy Business Recorder*

### **Entire team of MCC Gwadar transferred**

The Federal Board of Revenue (FBR) has transferred and posted the entire team of customs officials (Grade 17-20) at Gwadar and replaced it with new customs officials including Collector of Customs and Additional Collector of Customs at Model Customs Collectorate (MCC) Gwadar. In this regard, the FBR has issued a notification here on Monday.

According to the notification, Syed Tanveer Ahmad (Pakistan Customs Service/BS-20) has been transferred from Director, Directorate of Reforms and Automation (Customs), Karachi and posted as Collector, Model Customs Collectorate, Gwadar (he will hold additional charge of the post of Director, Directorate of Reforms and Automation (Customs), Karachi; Dr Arslan Subuctageen (Pakistan Customs Service/BS-20) Model Customs

Collectorate, Gwadar to Chief, Federal Board of Revenue (Hq), Islamabad; Ashir Azeem Gil (Pakistan Customs Service/BS-19) from Additional Director, Directorate of Internal Audit (Customs), Karachi to Additional Collector, Model Customs Collectorate, Gwadar; Muhammad Ashfaq (Pakistan Customs Service/BS-19) from Additional Collector, Model Customs Collectorate, Gwadar to Additional Director, Directorate of Training & Research (Customs), Islamabad; Honnak Baloch (Pakistan Customs Service/BS-18) from Deputy Director, Directorate of Post Clearance Audit, Karachi to Deputy Collector, Model Customs Collectorate, Gwadar and Hamid Hussain (Pakistan Customs Service/BS-17) has been transferred from Assistant Collector, Model Customs Collectorate, Gwadar and posted as Assistant Collector, Model Customs Collectorate, Gilgit-Baltistan.

Sources said that the previous team of customs officials headed by Collector of Customs Dr Arslan Subuctageen made record collection and seizures of smuggled goods and narcotics during his tenure. MCC Gwadar has made record tax collection of Rs 8.4 billion during first half (July-December) 2013-14 against assigned target of Rs 3.5 billion, showing enormous growth of 236.47 percent. From July 1 to December 31, MCC Gwadar was able to amass 236.47 percent higher than its overall consolidated target of all taxes together by collecting Rs 8486.58 million against the allocated target of Rs 3588.83 million.

Break-up of tax collection revealed that the customs duty collection stood at Rs 138 million against Rs 177 million, reflecting achievement of 80 percent of the target. Sales tax collection amounted to Rs 6395.02 million against 2780.26 million, showing extraordinary increase of 230 percent. The collection of withholding tax totalled at Rs 1951.58 million against Rs 629.49 million. The collection of the federal excise duty (FED) was Rs 1.27 million against Rs 1.82 million. As against the corresponding period of last fiscal year (2012-13), MCC Gwadar achieved 164.20 percent growth by collecting Rs 8486.58 against last year's collection of Rs 3212.13 million, data added. – *Courtesy Business Recorder*

### **Data disclosure: FTO recommendation pending action**

A key recommendation by Federal Tax Ombudsman (FTO) is pending implementation wherein it was held that any person who, in contravention of section 216 of Income Tax Ordinance, 2001

discloses any particulars of taxpayer's assessment record is guilty of an offence, which is punishable, on conviction, with fine and/or imprisonment.

Sources told that under the newly introduced Federal Ombudsmen Institutional Reforms Act, 2013, FBR is legally obliged to implement the recommendations issued by the FTO after lapse of 60 days, in this regard a letter has been issued by the Adviser (I&M) FTO to the Secretary Revenue Division, Islamabad. As per recommendations issued in a unique case decided by FTO Abdur Rauf Chaudhry, an astonishing case of data theft will be investigated by Cyber Crimes Wing of Federal Investigation Agency and FBR, involving tax officers, who illegally accessed confidential taxpayers' assessment record.

It was a unique case where complainant's assessment record has been accessed by certain FBR officials when they were not charged with conducting any enquiry involving assessment of his income.

When contacted a Lahore based tax lawyer Waheed Shahzad Butt told this correspondent that the provisions of Section 216 the Income Tax Ordinance, cast a statutory responsibility on the FBR to ensure the integrity of a taxpayers assessment record. Maintaining confidentiality of all information contained in the assessment record of taxpayers is responsibility of the concerned office of the FBR where the data is stored/maintained.

In this landmark investigation by the FTO office, leakage of sensitive information from the Complainant's assessment record is evident from the fact that direct references have been made to information borne on the Complainant's income tax returns and wealth statements. This shows that the Dept. has not been able to ensure the integrity of Complainant's assessment record and this lapse not only tantamount to maladministration as defined in Section 2(3) of the FTO Ordinance but illegal access to Complainant's assessment record also constitutes data theft under Section 216 of the Ordinance. Data theft in shape of picking tax record of individuals or act of stealing computer-based information is a severe criminal offence also falls under the category of Cyber Crimes. In order to curb the mal-practice copy of the recommendations issued by the FTO has been forwarded to the National Response Centre for Cyber Crimes (NR3C) wing of FIA for initiating criminal investigation into the matter, as per law.

Sources further stated that the FBR has decided to place new safeguards in the database of taxpayers to ensure security of

sensitive, confidential and classified data by enhancing existing security features in the electronic systems maintained by FBR.

The FTO issued recommendations to the FBR to conduct enquiry to determine how and why complainant's assessment record came to be accessed by a number of FBR officials when they were not charged with conducting any enquiry involving him in any manner nor were they involved in the assessment of his income for any Tax Period, devise a foolproof SOP in consultation with the National Response Centre for Cyber Crimes (NR3C) wing of the FIA to protect the confidential data of taxpayers and enforce strict confidentiality of passwords assigned to field officers for purposes of accessing taxpayer's electronic record, the FTO order added. – *Courtesy Business Recorder*

### **Luxurious vehicles: FBR's targeted action helps recover tax**

The Federal Board of Revenue Monday launched a country-wide targeted exercise against big investors in luxury cars and recovered tax from individuals who have made huge investments, but failed to declare their actual income or source of investment in the income tax returns.

Sources told here on Monday that the first phase of the exercise would register those investors of luxurious vehicles, who have never filed their income tax returns. The second phase would focus on recovery of tax from those individual investors, who have filed their returns but made huge concealment of income. The FBR has noted that huge investment has been made in luxury vehicles during the last few years. However, investors have not disclosed their details of investment for the tax purposes.

Details revealed that the FBR has initiated a targeted exercise to tax individuals who have made huge investments in various sectors in the recent past. The task of investigating and detecting such investments in luxury cars, real estate and other sectors has been assigned to the Directorate of Intelligence & Investigation-IR, the intelligence arm of the FBR.

In this connection, the Directorate General Intelligence & Investigation-IR has already collected and processed crucial data related to the purchase of luxury cars in the past three-four years. The data is now being utilised to reach the real quantum of income in these cases and tax it accordingly. In the first phase, the Directorate General is pursuing the cases of those luxury car

owners who have not filed their tax returns despite making such huge investments. It is pertinent to mention that under the income tax laws, a person possessing a vehicle is obligated to file tax return regardless of whether any income is earned or not. The Directorate General has already started issuing notices in such cases. In the second phase, the Directorate General will initiate action in the cases of those investors who have filed their tax returns but their declared income is not proportionate to the investments made in the luxury cars.

Sources further stated that the whole exercise is being pursued in a non-discriminate manner and the FBR intends to take across the board action in the detected cases. The exercise is part of the FBR plan to dispel the impression that tax burden in the country is generally carried by the middle and low income groups whereas individuals with huge consumption and investment either remain outside the tax net or pay only meagre tax. Action against the investors of luxury vehicles is part of the larger plan to detect and tax investment in other sectors of the economy also. It has been learnt that the Intelligence Wing of the FBR has also collected discreet information about investments in large real estate projects and action in the cases of investors will be launched shortly. In this connection, the field offices of the Directorate General of Intelligence & Investigation-IR have received special instructions, sources added. – *Courtesy Business Recorder*

### **Wooden products to China: FBR likely to allow export of detained consignment**

The Federal Board of Revenue (FBR) is likely to allow export of a consignment containing finished wood products to China, as the consignment has been detained by customs department in Karachi under Export Policy Order-2013. In this regard, the FBR has issued instructions to the Model Customs Collectorate of Export Karachi and MCC Port Qasim on Monday and sought comments on the request of the Climate Change Division for allowing export of the said consignment.

According to the FBR's instructions, the Collector of Customs should submit its comments on priority basis on the 'export of sawn wood parts of portable polished outdoor barbecue wooden tables'. Climate Change Division has asked the FBR that M/s Trading Constellation (Pvt) Limited has approached the division with the request to convey to the Customs Authorities who are

holding an export consignment of furniture tables on the pretext that the timber and wood are included in Schedule-I of the Export Policy of 2013.

Climate Change Division has further informed the FBR that attention is invited to Chapter 94 of Pakistan Customs Tariff under which manufactured wooden products are allowed for export. Attention is also invited to the figures provided by the Pakistan Bureau of Statistics in which Pakistan has earned huge foreign exchange during financial year 2012-13.

In view of above, Customs Authorities may be instructed to facilitate the export of finished wood products in the public interest, Climate Change Division added. The company had informed the Climate Change Division that it has inked an agreement with a Chinese company, to manufacture and export of the subject tables. As the tables are meant to be installed in open air it needs to be in as natural form as it could be and does not need to be in ultra finished shape, however according to the agreement these are needed to be glossy polished as required by the importer in China.

In pursuance of the agreement with Chinese importer, the company has manufactured first lot of 150 tables from which two containers having 50 tables each are lying at Port Qasim Karachi with the custom authorities and another container having 50 tables too is on its way to Karachi.

The unit was of the view that the custom authorities at Karachi are mistakenly considering the goods as raw timber export, which is prohibited in Pakistan, whereas the company according to the requirement of importer in China, have manufactured the subject goods in Multan by crafting it from Sawan wood and after finishing the parts have polished the same with high grade polish and each part is also packed in corrugated sheet having unique number showing its part number on it for perusal of custom authorities.

Needful to mention here that against the subject export the company is earning substantial foreign exchange in US dollars and have already received in advance the sale price of goods @ 26000 US dollars for each container of 50 tables from its importer in China through legal banking channel of Pakistan. Such exports we believe help Pakistan in balancing the trade deficit between the countries and helps Pak rupees to stabilise in international market, it added. It is, therefore, requested that the said export

may be allowed and future export of such items by the company may be ordered to be supported and cleared on priority basis by the customs authorities, the company added. – *Courtesy Business Recorder*

Reference No: ID/PR&D/PDW-II/GRS/2014/18520,

Islamabad, the 7<sup>th</sup> January, 2014

**SECP CIRCULAR NO. 01/2014**

Subject: **Growth Rate Scenarios for Life Insurance and Family Takaful Illustrations – 2014.**

Life Insurance & Family Takaful Product Illustration is an integral part of the overall sales process. It helps to enhance transparency, provides better understanding of the product to prospective policy holder and enables them to make informed decisions as well as making comparison between various Life Insurance and Family takaful products.

Life insurance and Family takaful companies use three growth rate scenarios to demonstrate projected benefits to potential policyholders. The SECP specifies these scenarios based on long term interest rate outlook prevalent in Pakistan. The SECP has decided that, for the year 2014, there should be no change in the three scenarios for the rates of return assumption as specified for the year 2013 through Circular No. 1/2013 dated January 16, 2013. Accordingly, the growth rates scenarios for Life insurance and Family takaful illustration will remain at **7%, 9% and 11%** for the year 2014 and onwards.

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