

**13th KTBA CASE LAW UPDATE
(September 01, 2023)**

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Dear Members,

A brief update on a recent judgment on **“Agency Relationship is Established through a Binding Agreement where an Agent is Granted Authority to Act on behalf of its Principal; section 80C is a Non-Obstante Clause and Applies if Tax has been deducted”** by Supreme Court of Pakistan is being shared with you for your knowledge.

This update is in line with the efforts undertaken by our **“CASE LAW UPDATE COMMITTEE”** apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Zafar Ahmed)

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September 01, 2023

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Hon. General Secretary

September 01, 2023

13th KTBA CASE LAW UPDATE
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AGENCY RELATIONSHIP IS ESTABLISHED THROUGH A BINDING AGREEMENT WHERE AN AGENT IS GRANTED AUTHORITY TO ACT ON BEHALF OF ITS PRINCIPAL; SECTION 80C IS A NON-OBSTANTE CLAUSE AND APPLIES IF TAX HAS BEEN DEDUCTED

Appellate Authority: Supreme Court of Pakistan

Appellant: Commissioner Inland Revenue.

Section: 80C & 143B of the ITO, 1979 (Sections 153 and 115(4) of ITO, 2001)

Detailed judgment was issued on March, 13 2023 [Civil Appeal 1275 of 2009].

Background: The appeal was filed by the department against separate judgments passed by the Sindh and the Lahore High Courts. It was argued by that relationship between the assessee company and the marketing company was that of principal and agent and not that of seller and purchaser. It was also argued that section 80C speaks of recipient and payer instead of purchase and sale. The purpose of the appeal was to challenge the claim of presumptive tax regime by the taxpayer.

Decision of the Court:

First Ruling of the Court: The law of agency is a common law doctrine that governs the relationship between an agent and a principal. This relationship is established through a binding agreement in which an agent is granted authority to act on behalf of its principal and the Agent must fulfil his obligations to his principal. The principal can be held liable for actions of his agent under vicarious liability. The agency relationship can be terminated through mutual agreement or revocation by principal or repudiation by agent or annulment of authority by principal.

Second Ruling of the Court: In accordance with Section 19 of the Sale of Goods Act (SOGA) of 1930, under a contract for sale of specific or identified goods, ownership of goods is transferred to buyer at the time intended by the parties. To determine this intent, one must consider (1) the terms of the contract, (2) the conduct of the parties, and (3) the circumstances of the case. On the other hand, Section 20 of the SOGA explains that if there is an unconditional contract for sale of specific goods in a deliverable state, ownership of goods is passed to the buyer when the contract is made even if the payment of price or the delivery of the goods, or both, are postponed.

Third Ruling of the Court: The Court has discussed the provision of SOGA with respect to relationship of Principal and Agent in the following manner:

- Section 182 defines "Agent" and "Principal," stating that an agent acts on behalf of another person in dealings with third parties.
- Section 188 deals with the extent of an agent's authority, stating that if an agent is authorized to perform an act, they have the authority to do all lawful things necessary to accomplish that act or conduct the business.

- Section 211 outlines the duties of an agent towards his principal, requiring him to follow the principal's directions or adhere to the customary practices of the relevant business and an agent must compensate his principal for any loss and account for any profits.

- Section 222 details the duties of the principal towards his agent, stating that the principal must indemnify his agent for lawful acts performed within the given authority.

- Section 223 further explains that if one person employs another to perform an act and the agent does so in good faith, the employer (principal) is responsible for indemnifying the agent, even if the act causes harm to the rights of third parties.

Fourth Ruling of the Court: Relying on the case of Bolan Beverages (Pvt.) Ltd. v. PepsiCo Inc. and 4 others (PLD 2004 SC 860) it has been held that Bolan Bottlers, despite purchasing concentrate from Pepsi Cola Company, does not represent Pepsi Cola when dealing with third parties. The court emphasized that for an agent to exist, there must be a connection between the principal and the third party. Since Bolan Bottlers' dealings with third parties do not bind Pepsi Cola, the essential element of agency is absent. Merely setting up an office and infrastructure for business purposes does not create an agency relationship.

Fifth Ruling of the Court: Analysis of the terms and conditions of the Agreement leads us to an explicit finale that it was an agreement for outright sale by means of which the payments were being made in full after deduction of the advance income tax by the marketing company for settlement of invoices. Neither substratum of the agreement underlines any characteristics of agency nor contains any provision for agency commission.

Sixth Ruling of the Court: It has been held that the respondent company received an amount for an outright sale, and the tax on this amount was deducted under Section 50(4) of the ITO 1979. As per to Section 80-C of the ITO 1979, any amount received on which tax is deductible under Section 50(4) is considered as total income tax liability of the assessee.

Conclusion and Comments:

The respondent company was held to have rightfully claimed the benefit of Section 80-C owing to tax deducted under Section 50(4).

The judgment raises complex taxation issues that significantly impact the tax liability, particularly concerning provincial sales tax on services. The problem arises when agency contracts are erroneously treated as sales contracts by provincial authorities, leading to a situation where agency services become taxable. This issue is particularly relevant in cases involving distributors who may be unfairly subjected to additional tax burdens due to misinterpretation of the nature of their agreements.

NOTE: Members are requested to read the complete order attached herewith.

DISCLAIMER:

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings or project would not be binding on KTBA.

Dear Members,

A brief update on a recent judgment on **“Agency Relationship is Established through a Binding Agreement where an Agent is Granted Authority to Act on behalf of its Principal; section 80C is a Non-Obstante Clause and Applies if Tax has been deducted”** by Supreme Court of Pakistan is being shared with you for your knowledge.

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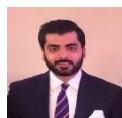
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Best regards

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