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This issue contains:

Kind regards

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Nawaz Sharif & cronyism

by
Huzaima Bukhari & Dr. Ikramul Haq

The unlawful removal of Tariq Malik, Chairman of National Database and Registration Authority (NADRA) and his restoration by the Islamabad High Court gives credence to allegations of critics of Premier Nawaz Sharif that during his rule cronyism flourishes. The fault of Mr. Tariq Malik was to resist pressure of issuing certificate of thumb impressions in accordance with wishes of stalwarts of Muslim League-Nawaz [PML-N] in a case before Election Tribunal of NA-118 Lahore. Riaz Hussain of PML-N was declared successful and rival candidate of Pakistan Tehreek-e-Insaf (PTI) challenged the results. Strangely, leaders of PML-N keep on playing the trumpet of rule of law but sacked Tariq Malik for not obliging them. In the late hours of December 2, 2013, he was told "to be ready to quit his post".

The decision of removing Chairman of NADRA to protect some chums by Nawaz Sharif and Shahbaz Sharif testifies to the fact that the present government, like its predecessors, believes in cronyism rather than rule of law. Even during their third term, Nawaz-Shahbaz duo has not learnt any lessons—they still practice arbitrariness and authoritarianism and promote rule of mediocrity. Materially, there is no difference in military and civil rules in Pakistan, both thrive on cronyism.

On November 28, 2013, the worst form of cronyism surfaced when Nawaz Sharif announced unprecedented tax "concessions" and "incentives" (sic) for tax evaders. The tax amnesty package for mighty traders, reflective of crony capitalism, confirms where the real power of Nawaz-Shahbaz duo rests. According to reports, a deal was reached between the traders and Shahbaz Sharif for "tax incentive package" to destroy already fragile tax system in return for political support. The package was prepared by home-made economic wizard, Ishaq Dar, and loyal civil servant, Tariq Bajwa, Chairman of Federal Board of Revenue (FBR), who knows nothing about taxes! On the one hand, Ishaq Dar committed strict tax enforcement with IMF and on other Premier Nawaz brazenly flouted all promises announcing no-tax-regime for the rich and mighty traders. Dr. Meekal Ahmad rightly observed, "but this is vintage Nawaz Sharif–shoot from the hip and damn the consequences".

The "package" announced by Prime Minister was so detrimental for revenue target of Rs. 2474 billion, fixed for the current fiscal year, that top tax official of FBR [Member Tax Policy] expresses his dismay at a seminar, held by the Sustainable Development Policy Institute on tax and energy reforms, in Islamabad on November 29, 2013. In a report, Shahbaz Rana, noted: "perturbed by a host of relaxations given by the government to affluent industrialists that are undermining efforts to enhance revenues, the country's top tax collecting agency has said

concessions offered to the business community have made this year's budget irrelevant".

The Member Tax Policy candidly conceded that business community had proved strong enough in exerting pressure in a manner that FBR had been unable to stand its ground. It was a rare occasion that a top official of FBR expressed indignation over "incentive package" (sic) declared by the Prime Minister in person. It shows that even FBR officials were overruled or never taken into confidence. On the one hand politicians debunk FBR officials for not collecting taxes and on the other take extreme anti-tax measure. The time has come that we should support dedicated FBR team and expose political leadership that has shown its true colours under Nawaz-Shahbaz-Dar troika.

Prime Minister declared tax amnesty package promising no question would be asked about source of investment in new and existing projects. Waiver from audit was also promised to those taxpayers who pay 25% more tax over last paid (which was grossly understated in majority of the cases). The package would certainly undermine the ongoing efforts of FBR to bring big fish into the tax net. For the rich and mighty, increase of 25% of tax or paying tax of Rs. 100,000 for the last five years (if returns were not filed) is more than a generous gift. Therefore, the Member Tax Policy and spokesman of FBR annoyingly said "the reality is that the business community is very strong and not ready to bear the burden according to its capacity".

The spokesman of FBR gracefully admitted that innumerable Statutory Regulatory Orders (SROs)—a lethal instrument to amend tax laws—had been issued in the last five months "on the demand of the business community". He rightly observed that "If Parliament's approved budget is not acceptable to the people then the right of reversing it should also be exercised by Parliament". He said that "FBR is fed up with issuing SROs and is ready to surrender this power to Parliament". Even Finance Minister frankly conceded that "during the short tenure of government the business community had presented 26 demands and the government accepted and implemented 25 of them while the last was at the approval stage at the Ministry of Law".

Earlier, the main initiative of FBR, aimed at broadening of tax base and levying tax according to one's ability to pay, requiring mandatory filing of wealth statement was defeated by Nawaz-Shahbaz-Dar troika through issuing SRO 978 (I)/2013 on November 13, 2013. The "extraordinary concessions" of November 28, 2013 further irritated tax officials as no input was taken from them. Now, they should not be blamed for not meeting the assigned targets. Shamelessly, only 10,251 non-salaried taxpayers declared income exceeding one million rupees in 2012. Salaried people are paying more taxes than the businessmen, who earn millions and raise prices whenever they feel like to further rob the salaried class and poor masses.

The exploitative business class, especially traders doing business on cash basis, is highly jubilant over package announced by Nawaz Sharif. Gohar Ejaz, a leader of the All Pakistan Textile Mills Association commented: "It is basically an attempt by the government to stimulate economic growth by encouraging investments by retailers and small manufacturers, who are operating outside the organised corporate sector, in productive sectors to create jobs. It doesn't cover the organised corporate sector". He said that "package" was prepared on the demand of Federation of Pakistan Chambers of Commerce and Industry (FPCCI) that is overwhelmingly dominated by traders, small manufacturers and others working in the non-corporate sector. They are not paying even a fraction of the taxes they owe to the State—**'Traders and taxes'**, *Business Recorder*, May 17, 2013. The success of 'Nawaz Package' giving immunity about the source of investment made in new industrial undertakings or expansion projects on or after January 1, 2014 is doubtful in prevalent unfavourable conditions. The incentives to tax evaders, as a bad public policy, can further ruin genuine investment for revival of economy. They will mint more money by abusing the system, and surely evade taxes.

'*In Crony Capitalism in America: 2008-2012*', Hunter Lewis tells us how so-called champions of free market in USA have been diverting taxpayer money to enrich the few. This is exactly what Nawaz-Shahbaz-Dar troika is upto. For them private interests are supreme to national interests. It is, thus, understandable whom they are calling for favours, and why most of the deals are being done behind closed doors.

In a democratic set-up, the electoral process ensures interest of the people over those who hold political offices. But in Pakistan the rulers want to capture all resources for self-interest. For this they resort to cronyism that destroys all institutions. The main cause of our present day pathetic socio-political and economic situation is existence of inefficient, corrupt, repressive and criminal institutions that are totally indifferent to the welfare of the common people. Successive governments' policies of self-aggrandizement have reduced Pakistan to a State in perpetual conflict. Our military and civilian rulers have always acted in identical manner in violating all established norms of rule of law and result is before us. The people with money power have hijacked the entire system and sufferings of common men are increasing day by day. Those who want to counter it must read Noam Chomsky's '**Profit over People**' and resort to political activism that he says "can reclaim people's rights as citizens rather than as consumers".

European Union

EU Seeking Progress in WTO Trade Talks

The European Union's Foreign Affairs Council has expressed its hope that ongoing talks will spur on the World Trade Organization to consolidate its role in promoting global trade liberalization.

EU trade ministers met this week on the margins of the ninth WTO Ministerial Conference in Bali, Indonesia. They agreed that the main outcome of the gathering should be an ambitious Trade Facilitation Agreement, and that a number of secondary agricultural issues could be inserted into the package, depending on its overall balance. They also called on the Conference to help developing and least-developed countries improve their integration into the multilateral trading system.

EU estimates suggest that a one percent drop in the cost of trade – brought about via a streamlining of customs procedures, a reduction in red tape, and the tackling of corruption – could bring over EUR30bn (USD40.7bn) to the world income. Around two-thirds of this predicted gain could go to the developing world.

A WTO Parliamentary Conference is also taking place in Bali.

In his opening speech to the conference, co-chair Vital Moreira stressed that, "as representatives of our peoples, [parliamentarians were] well placed to take on board their concerns when scrutinizing legislation." Phairoj Tanbanjong, the second co-chair, added that attendees must "strive to ensure that multilateral trade relations are governed by ethical criteria and guided by equity, sustainability and transparency." – *Courtesy tax-news.com*

European Union-China

Cameron throws weight behind EU-China trade talks

David Cameron has said that he will put his "full political weight" behind the trade deal under negotiation between the European Union (EU) and China.

The UK Prime Minister is currently taking part in a three-day trade mission to China. He is being accompanied by the Secretaries of State for Health, Environment, Culture, Universities, Trade, and the Foreign and Commonwealth Office.

Cameron kicked off his visit with an article in the Chinese business publication Caixin. In his piece, Cameron stressed the need for "a new long-term goal of an ambitious and comprehensive

EU-China Free Trade Agreement." He intends to build on the recent launch of investment talks between the two parties, and on China's burgeoning economic reforms.

According to Cameron, the UK is "uniquely placed to make the case for deepening the European Union's trade and investment relationship." Initial analysis suggests that a successful treaty could be worth up to GBP1.8bn (USD2.95bn) a year to the UK economy alone.

The Government further estimates that eliminating tariffs in the 20 sectors where they are highest could save UK exporters approximately GBP1bn a year. High tariff areas, such as pharmaceuticals, mechanical and electrical goods, and vehicles, account for 36 percent of all UK exports to China.

The UK delegation has so far secured more than GBP120m worth of healthcare trade deals, and a separate agreement will launch a five year program of cultural exchanges. – *Courtesy tax-news.com*

Belgium

Belgium will revise Environmental Taxation in upcoming reform

All too aware that Belgium is trailing a long way behind its European Union (EU) partners in terms of environmental taxation, Belgian Finance Minister Koen Geens has reiterated the Government's intention to address the issue, within the framework of the upcoming reform of taxation.

Conceding that Eurostat's 2011 environmental tax figures have once again placed Belgium at the bottom of the EU-27 table, Finance Minister Geens made clear that the Government is currently drawing up plans to overhaul taxation, to shift the tax burden away from labor and on to other sources of income, notably wealth, consumption, and the environment.

According to the latest statistics, environmental tax revenues accounted for just 4.7 percent of income from total taxes and social contributions (TSC) in Belgium in 2011. In fact, environmental tax levels have remained stagnant in Belgium since 2007. Belgium currently applies very low rates of taxation on energy.

Only France fared worse in Eurostat's analysis, placed at the bottom of the table as environmental tax revenues represented a mere 4.1 percent of TSC in 2011. In contrast, Bulgaria, the

Netherlands, and Malta ranked top of the EU-27 leader board, with environmental tax revenues amounting to 10.6 percent, 10.1 percent, and 9.6 percent respectively. The vast majority of European countries showed levels of environmental tax revenue in a band ranging from 6 percent to 10 percent of TSC in 2011.

In its recently published study, Eurostat revealed that environmental taxes accounted for 6.17 percent of all revenues from taxes and social contributions in the EU-27 in 2011, amounting to a total of EUR303bn (USD412bn).

Furthermore, Eurostat announced that in 2011 almost 75 percent of all environmental taxes in the EU were made up of energy taxes, while 21 percent comprised transport taxes, and only 4 percent of the EU-27 environmental tax total flowed from pollution and resource taxes, such as taxes on the extraction of raw materials, on measured or estimated emissions to air, and on water, noise, and waste management.

Compared with 1995, environmental tax revenue has increased by more than EUR100bn, or 59 percent. However, as a percentage of GDP and TSC, environmental tax revenue has actually declined.

In comparison to GDP, environmental tax revenue increased during the 1990s reaching a maximum in 1999 of 2.8 percent of GDP. Since then, environmental tax revenue as a percentage of GDP has gradually fallen, reaching a historical minimum of 2.32 percent in 2008. Between 2009 and 2011, it has been steady around 2.39 percent. The distribution of the tax categories has remained roughly the same. – *Courtesy tax-news.com*

FBR launches audit of concessionary imports under FTAs, PTAs

The Federal Board of Revenue (FBR) has launched the audit of concessionary imports under various trade agreements that were cleared by the Customs collectorates, to determine revenue losses to the national exchequer, official sources said on Monday.

The Directorate of Internal Audit (Customs) constituted four teams for audit for the period 2012-13 of the Customs collectorates in Karachi.

As per an official memo, the directorate assigned Muhammad Rizwan, assistant director, Abdul Majeed, assistant director, Omar Shafique, deputy director and Baleeghur Rehman, deputy director, to conduct the audit of Model Customs Collectorate (MCC) Appraisement West, MCC Appraisement (East), MCC Port Muhammad Bin Qasim and MCC Preventive, respectively.

Sources in the FBR said that the audit has been initiated on a report prepared by the Customs authorities in early 2012 that identified exemptions provided through various statutory regulatory orders, including for the preferential trade agreements (PTAs) and free trade agreements (FTAs), had cost billions of rupees to the national exchequer.

The concessions granted by the government have also been misused in the shape of under-invoicing and misdeclaration, the sources said.

Pakistan Economic Survey 2012-13 revealed that the cost of tax exemptions for the fiscal year stood at Rs239 billion that was increased from Rs206 billion in the preceding fiscal year. The cost of exemptions was the highest in the customs duty, which was about half or Rs119.7 billion of the total exemptions granted during the year.

Another FBR report revealed that the trade agreements of Pakistan with other countries had cost Rs14 billion in revenue against exemptions and concessions given on imports during 2010-11. The report also showed that the exemptions and concessions provided constitute around 15 percent of the total cost of exemptions of Customs.

The major chunk of these exemptions has been given on imports from China, as Pakistan suffered Rs11 billion due to FTA in 2010-11.

The Customs authorities said that due to large-scale tariff rationalisation and exemptions, including zero rating in import taxes, the share of import taxes in total taxes and GDP have come down during the last two decades.

The FBR is in the process of identifying the concessionary regime provided through exemptions and concessionary SROs.

The process is likely to be completed by the end of month and on the recommendations of the committee working on the exemptions regime, the FBR will decide about the elimination of certain SROs, the sources said.The FBR sources said that the latest audit exercise would also help the tax authorities plug revenue leakages. – *Courtesy International The News*

Move to avert flight of forex: FBR plans to set up kiosks at major airports

In a move to avert flight of foreign currency, the Federal Board of Revenue (FBR) is planning to establish kiosks at the country's all major airports to verify the source of income of the itinerants, it is learnt here on Tuesday. According to sources, although the State Bank of Pakistan had set a cap of $10,000 for the itinerants, it was permissible only for taxpayers.

They said following reports that some unscrupulous elements were using families for transferring foreign currency abroad, the department was evolving appropriate measures to avert flight of forex. Replying to a question, the sources said that staff at these kiosks would be responsible to verify itinerants whether they were enrolled in the tax net or not.

If itinerants were not taxpayers, the staff would not only take foreign currency into custody but also ask itinerants to disclose their source of income, they maintained. Answering another question, sources said this proposal was in initial stages and awaiting approval from the authorities concerned. He added that this was the only way to maintain foreign exchange reserves, which were presently at lowest level.

Similarly, Customs department has also proposed to the SBP to reduce foreign currency cap from $10,000 to $3,000. Customs authorities said that the proposal was aimed at averting flight of forex besides deflecting currency depreciation. Customs authorities were of the view that foreign currency cap of $10,000 is creating an adverse impact on the economy. Therefore, the customs

department has sought imposition of ban on persons below 15 years to bring foreign currency with them and proposed to fix $1,000 limit for persons between the age of 15-18 years. – *Courtesy Business Recorder*

Four benchmarks set: plan to expand ST net drafted

The Federal Board of Revenue has drafted a new plan (2013-14) for expansion of the sales tax net by compulsorily registering high-risk sectors, including unregistered business individuals making credit card payments over Rs 5,000,000 per year. Sources told on Tuesday that the FBR is in the process of finalising a new plan (2013-14) to broaden the sales tax base through registration of potential persons with the sales tax department on the basis of four new benchmarks/criteria.

The FBR has chalked out some standards for registration of potential persons with the sales tax. The benchmark has been set on the basis of high-risk and low-risk sectors liable to sales tax registration keeping in view business trends in the country. The plan would be implemented on national level following approval by the tax authorities.

Under the plan, the FBR will register all businessmen having industrial or commercial utility connections paying more than Rs 600,000 per year in their utility bills. The second benchmark for registration covers all persons who declare an annual turnover of above Rs 5,000,000 on income tax side in their returns. The sales tax registration would cover clients of advertising firms. The four benchmark for sales tax registration included business individuals with credit card payments over Rs 5,000,000.

According to details, the FBR is pursuing to expand the tax net and bring all those persons who are liable to registration, but currently not registered within the sales tax. In this regard third party data and utility bills would be used as a tool to boost compulsory sales tax registration through effective enforcement.

The limit for sales tax exemption on utility charges is Rs 600,000 recently government has imposed additional 5% sales tax on persons not being registered with sales tax. The government is now considering seeking data from utility companies who are already maintaining complete data base of their consumers. Hence, all those industrial consumers having utility bills of over Rs 600,000 during the financial year are not only required to pay

additional tax but compulsorily registered with the sales tax department.

Likewise persons having business turnover above Rs 5 million are also not covered under the umbrella of exemption given in threshold limit in Sixth Schedule of the Sales Tax Act 1990. Thus, the FBR is planning to issue notices to all persons having declared turnover of above Rs 5 million with their income tax statement or has shown payments through credit card over Rs 5 million for business purpose. It is expected that through such targeted measures the FBR would be able to bring potential unregistered persons successfully in sales tax net. In the past, the FBR tired its level best to expand the sales tax base, but failed to implement such targeted plan. In order to include several high risk sectors in the sales tax net, the plan has been devised to identify the persons, required to get sales tax registration, sources added. – *Courtesy Business Recorder*

Low FED collection: FBR probing tax record of two cigarette giants

The Federal Board of Revenue is minutely probing tax record of two multinational cigarette companies for not fulfilling the commitment made in budget (2013-14) for achieving 20 percent growth in FED collection during the current fiscal year. Sources told here on Tuesday that the FBR has assigned the task to the concerned tax department/agency for thoroughly investigating data of first quarter (July-September) 2013-14 of both the companies to ascertain the reasons for low collection.

The two cigarettes giants have committed with the FBR to show at least 20 percent increase in FED collection following introduction of new FED slabs for different brands of cigarettes. Through Finance Act 2013, the government had revised the FED structure on cigarettes on the basis of FED slabs proposed by the multinational cigarette manufacturing companies. The companies have also committed to make the said growth in revenue collection after incorporation of new FED structure on cigarettes. Sources said that one of the units has shown 15 percent growth in FED collection against the committed target of 20 percent. The second company has shown even below 15 percent growth in collection during the period under review.

In 2013-14 budget preparation exercise, the FBR had proposed a very simple FED structure for levying duty on cigarettes. At that

time, the proposal was duly approved by the Finance Ministry for revision of the FED slabs on cigarettes. However, a new proposal was floated by the cigarette manufactures which was incorporated in the Finance Act, 2013.

Through Finance Act 2013, the First Schedule of the Federal Excise Act 2005 was amended to replace the three tier FED structure with two-tier specific rate structure. The revised FED structure on cigarette was drafted by the multinationals and the same was duly incorporated in the Finance Act. This was for the first time that the Federal Board of Revenue (FBR) has taken major budgetary measure of the FED on the basis of proposal drafted by the cigarette manufacturers.

According to the revised FED structure, the rate of the FED would be Rs 2325 per thousand cigarettes where locally produced cigarettes if their on-pack printed retail price exceeds Rs 2286 per thousand cigarettes. The rate of the FED would be Rs 880 per thousand cigarettes where locally produced cigarettes if their on-pack printed retail price does not exceed Rs 2286 per thousand cigarettes. The FBR has estimated to collect Rs 12 billion from the revised FED structure on cigarettes. – *Courtesy Business Recorder*

2013 TRI 1951 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
MUMBAI "B" BENCH, MUMBAI

Vijay Pal Rao, Judicial Member and N.K. Billaiya, Accountant Member

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FACTS/HELD

AO's action of recovering outstanding taxes without affording reasonable time to take remedial steps is a misuse of powers and a gross violation of the directions laid down by the Courts. AO has to refund the taxes recovered

1. The assessee received the order of the CIT(A) on 16.11.2013. It filed an appeal before the Tribunal on 18.11.2013 which was the next working day. The assessee also filed an application before the Tribunal requesting stay of demand. The said application was fixed for hearing on 22.11.2013. However, the AO, without awaiting the outcome of the stay application, attached the assessee's bank account u/s 226(3) on 18.11.2013 and withdrew Rs. 159.84 crore. The assessee argued before the Tribunal that the coercive action of the AO was wrong because (i) the AO had taken coercive action before the expiry of time of filing the appeal against the order of the CIT(A), (ii) the action was taken even prior to the disposal of the stay application by the Tribunal and (iii) no prior notice was given to the assessee before taking the recovery action u/s 226(3). HELD by the Tribunal:

> The action of the AO in recovering the outstanding without affording the assessee minimum reasonable time to take remedial steps is a misuse of powers and a gross violation of the directions laid down by the Courts as well as the basic rule of law and principles of natural justice. Accordingly, we direct the Revenue to refund the entire amount of Rs. 159.84 crore to the assessee within 10 days from the receipt of this order (Mahindra & Mahindra Ltd UOI 59 ELT 505, Mahindra & Mahindra W.P. 2164/2007, UTI Mutual Fund345 ITR 71 (Bom), RPG Enterprises 251 ITR 20 (Mum) & MSEB 81 ITD 299 (Mum) followed)

Stay application partly allowed.

Stay Application No. 293/Mum/2013 (Arising out of ITA No.6678/M/2013 Asst Year 2010-11).

Heard on: 22nd November, 2013.

Decided on: 25th November, 2013.

Present at hearing: S.E. Dastur & Nishant Thakkar, for Applicant. B.P.K. Panda, for Respondent.

JUDGMENT

Per Vijay Pal Rao:– (Judicial Member)

By way of this Stay Application the assessee is seeking stay against the demand of Rs. 159,84,03,717 arising from the assessment u/s 143(3) of Income Tax Act for the assessment year 2010-11.

2 We have heard the Mr. S. E. Dastur, Ld. Senior Counsel for the assessment as well as Mr. B. P. K. Panda, Ld. D.R and carefully perused the relevant record. The Ld. Senior Counsel has submitted that the impugned order of the CIT(A) has been received by the assessee on 16.11.2013 and the assessee has filed the appeal before this Tribunal on 18.11.2013 which is the next working day. However, the A.O has recovered the entire outstanding tax from bank account of the assessee by taking a coercive action u/s 226(3) of the Income Tax Act without waiting for the outcome of the Stay Application filed by the assessee before this Tribunal which was listed for today i.e. 22.11.2013. Thus, the A.O has taken the action which is in derogation and contravention of the various decisions of Hon'ble Jurisdiction High Court because the action of the A.O contradicts the basic principles laid down in the decisions viz. i) that the A.O has taken the coercive action before the expiry of time of filing the appeal against the order of the CIT(A) ii) the action was taken even prior to the disposal of the Stay Application of the assessee iii) no prior notice was given to the assessee before taking the recovery action u/s 226(3). The Ld. Senior Counsel has contended that the assessee is a authority setup under Maharashtra Housing and Area Development Act with view to solve the acute shortage of housing problem in the State. He has referred Section 1A of the Maharashtra Housing and Area Development Act, 1976 and submitted that the assessee has been setup for giving the effect to the policy of the State towards securing the principle specified under Article 39 of the Constitution of India and the execution of proposals, plans or projects and acquisition therefor of the lands and buildings and transferring the lands, buildings or tenements therein to the needy persons and the cooperative societies of occupiers of such lands or buildings. Thus, the Ld. Senior Counsel has submitted that the purpose and object of setting up of the assessee is implementing the policy as per the Constitution of India. He has relied upon the following decisions:

- *Mahindra & Mahindra Ltd. vs Union of India* 59 ELT 505 (Bom)
- *Mahindra & Mahindra Ltd. vs Assessing Officer* in Writ Petition No. 2164/2007
- *UTI Mutual Fund vs ITO* 19 Taxman 250
- *RPG Enterprises Ltd. vs DCIT* 251 ITR 20 (Trib) (Mum)
- *Maharashtra State Electricity Board vs JCIT* 81 ITD 299 (Mum)
- *Purnima Das vs Union of India and Others* 329 ITR 278 (Cal)
- *CIT vs Lucknow Development Authority, Gomit Nagar* 38 Taxman 246 (Ald)

3. The Ld. Senior Counsel has submitted that in the case of *Mahindra & Mahindra Ltd. vs Union of India* (supra) the Hon'ble High Court has held that it was highly improper on the part of the Collector and Assistant Collector to encash the bank guarantees before expiry of the statutory period of three months and in particular when the petitioners has specifically informed that the Stay Application is fixed for hearing. Accordingly, the Hon'ble High Court directed the respondents to pay entire amount recovered by encashing bank guarantees to the petitioner. The Ld. Senior Counsel then referred the decision in case of *Mahindra & Mahindra Ltd. vs Assessing Officer* (supra) and submitted that the Income Tax Department should follow the parameters while passing the orders on Stay Application filed in pending appeals to the first appellate authority as laid down in the case of *KEC International Ltd. vs B. R. Balakrishnan and others* 59 ELT 505. After considering the inappropriate action of the taxing authority the Hon'ble High Court has observed that the entire action of the respondent nos. 1 & 2 shocks our judicial conscience. Rule of law has been given a total go-bye and wilfully ignored. The Income Tax Authorities has acted in a high handed manner and the action is prima facie ab-initio-void. After observing the serious lapse on the part of the taxing authority the Hon'ble High Court has directed the respondent to bring back the said amount and shall be deposited with the Registrar General of the High Court. The Ld. Senior Counsel has then referred the decision in case of *UTI Mutual Fund vs ITO* (supra) and submitted that the Hon'ble High Court has again reiterated the guidelines which should be followed in the pending cases. He has then referred the decision of this Tribunal in case of *RPG Enterprises Ltd. vs DCIT* (supra) and submitted that in the similar facts the Tribunal has directed the Revenue Authorities to refund the amount recovered by the A.O by misusing his powers without waiting the outcome of the Stay Application or the time period for filing the appeal against the order of the CIT(A). Similarly, in case of *Maharashtra State Electricity Board vs JCIT* (supra) the Tribunal has again directed the Revenue Authorities to refund the amount which were collected without giving the sufficient opportunity and waiting till the hearing of the Stay

Application filed by the assessee. On the proposition of service of notice prior to recovery u/s 226(3), the Ld. Senior Counsel has submitted that in case of *Purnima Das vs Union of India and Others* (supra) the Hon'ble Calcutta High Cout has held that the copy of notice shall be forwarded to the assessee at his last address known to the A.O and such notice has to be served before action is taken. In the case of the assessee the A.O has not complied the provision of Section 226(3)(iii) of the Income Tax Act as the copy of the notice by which the recovery has been made from the bank account of the assessee was not served prior to such action. Thus, the Ld. Senior Counsel has submitted that the action of the A.O is in complete disregard to the orders of the Hon'ble High Court as well as this Tribunal and therefore the same is not sustainable. He has urged that the amount recovered unlawfully by the A.O should be refunded immediately and the recovery of the demand should be stayed. In support of his contention he has relied upon the order of this Tribunal on 16.3.2012 passed in the Stay Application No. 126/M/2012 for the assessment year 2009-10 and submitted that the Tribunal has found a prima facie strong case in favour of the assessee and thereby granted the stay against the demand for the assessment year 2009-10. He has relied upon the decision of Hon'ble Allahabad High Court in case of *CIT vs Lucknow Development Authority* and submitted that in the identical fact the Hon'ble High Court has held that mere selling some product at a profit will not ipso facto hit the assessee by applying proviso to Section 2(15) and deny exemption available u/s 11 when there is no material on record which may suggest that the assessee was conducted its affairs on commercial lines with motive to earn profit and has deviated from its objects. He has also relied upon the decision of Hon'ble Delhi High Court in case of *Bureau of Indian Standards vs Director General of Income Tax* (Exemptions) in Writ Petition No. W.P.(C) 1755/2012 as well as in case of *M/s GSI India vs Director General of Income Tax* (Exemption) in Writ Petition No. 7797/2009 and submitted that in these case a similar issue was decided by the Hon'ble High Court in favour of the assessee. Thus, the Ld. Senior Counsel has submitted that the assessee has very strong prima facie case in its favour and therefore the stay of recovery be granted.

4. On the other hand, the Ld. D.R has submitted that the recovery proceedings in this case were pending from the year 2010 as the Stay Application filed by the assessee was disposed off by the A.O with the direction to pay the tax in the instalment. The assessee has not complied with the directions passed by the DDIT (E) while deciding the Stay Application of the assessee. Further the assessee has filed a writ petition against the recovery of tax which is pending in the Hon'ble High Court. The Ld. D.R has further submitted that the A.O has complied with the provision and conditions prescribed u/s 226(3) of the Income Tax Act by serving the copy of the notice whereby the recovery has been affected. In rebuttal the Ld. Senior Counsel has submitted that though the assessee has filed a writ petition in the High Court but same has not come up for

hearing therefore in view of the various decisions the action of the A.O is not sustainable. He has referred the letter dated 13.11.2013 whereby the assessee has informed the Assessing Officer that the assessee has not received the impugned order passed by the CIT(A) and subsequently the assessee would like to pursue the course of second appeal. The assessee has also brought to the notice to the A.O the directions of the Hon'ble High Court in case of *UTI Mutual Fund vs ITO* 345 ITR 71. Despite the assessee's letter dated 13.11.2013 the A.O has taken a coercive action by recovery the entire tax amount from the bank of the assessee.

5. Having considered the rival submissions and careful perusal of the relevant record we note that the A.O issued a letter dated 11.11.2013 regarding recovery of outstanding demand in view of the order passed by the CIT(A) on 29.10.2013. In response to the said letter the assessee vide letter dated 13.11.2013 stated that the assessee has not received the copy of the order of the CIT(A) and further the assessee would like to pursue the course of second appeal. The assessee has also requested the A.O not to take any recovery action before the time for filing the appeal in view of the directions of the Hon'ble High Court in case of *UTI Mutual Fund vs ITO* (supra). The assessee was earlier asked to make the payment of outstanding amount in instalment of Rs. 17.76 crores per month starting from month of September 2013 but the assessee did not agree. The A.O then wrote a letter dated 14.11.2013 and reasserted the demand without further delay failing which action in terms of section 226(3) of the Income Tax Act shall be taken. The assessee received the impugned order of the CIT(A) ON 16.11.2013 and this fact has not been contraverted by the Revenue therefore the remedy with the assessee to file the appeal against the impugned order of the CIT(A) is available only after receipt of the impugned order but in the mean time the A.O has effected the recovery of outstanding sum of Rs. 159,84,03,720/- by taking action u/s 226(3) on 18.11.2013 itself. Thus, it is clear that the assessee was not afforded a minimum reasonable time to take remedial steps under the law against the impugned order of the CIT(A). Even the assessee has filed the appeal against the impugned order without any wastage of time on the very next working day but the A.O without waiting the hearing and outcome of the Stay Application has taken the coercive action of recovery of the entire outstanding amount from the bank of the assessee as per Section 226(3) of the Income Tax Act. The Hon'ble High Court in case of *Mahindra & Mahindra Ltd. vs Union of India* (supra) has opined in para 4 as under:

> *"4. In our opinion, it was highly improper on the part of the Collector and Assistant Collector to encash the bank guarantees before expiry of the statutory period of three months and in particular when petitioners had specifically informed that the stay application is fixed for hearing on 17th February 1992. Be that as it may, we accordingly direct Respondents Nos. 2 & 3 to pay entire amount recovered by encashing bank guarantees to the*

petitioners within 10 days from today. On receipt of the said amount by the petitioners, they shall execute bank guarantee in favour of the Collector of Central Excise within tow weeks thereafter. It is also made clear that until disposal of the stay application bank guarantee will continue and in the event if the Tribunal rejects the application for stay, the said order shall not be executed for a period of two weeks from the date of its service on the petitioners."

6. It has been observed by the Hon'ble High court that the action of the Central Excise Authorities encashing the bank guarantees before expiry of the statutory period of filing the appeal was highly improper. Similarly, in the case of *Mahindra & Mahindra Ltd. vs Assessing Officer* (supra) the Hon'ble High Court has taken a serious view of the action of the taxing authority by observing in para 9 as under:

"9. Entire action of the respondent Nos. 1 & 2 shocks our judicial conscience. Rule of law has been given a total go-bye and wilfully ignored. The Income Tax Authorities have acted in a high handed manner. The impugned action is prima facie ab-initiovoid."

7. In the case in hand we are of the view that the A.O has taken a coercive action by ignoring the basic rule of law and the directions and guidelines issued by the Hon'ble Jurisdiction High Court in case of *UTI Mutual Fund vs ITO* (supra) as under:

"In exercising his power, the Income-tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the power of mitigating hardships to the assessee."

These are, we may say so with respect, sage observations which must be borne in mind by the assessing authorities. Consistent with the parameters which were laid down by the Division Bench in KEC International Ltd. (supra) and the observations in the judgment in Coca Cola (P.) Ltd.(supra). We direct that the following guidelines should be borne in mind for effecting recovery:

1. No recovery of tax should be made pending

(a) Expiry of the time limit for filing an appeal;

(b) Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a higher forum, if so advised. Coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated.

2. The application, if any, moned by the assessee should he disposed of after hearing the assessee and bearing in mind the guidelines in KEC international Ltd. (supra);

3. If the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay;

4. When a bank account has been attached, before withdrawing the amount, reasonable prior notice should be furnished to the assessee to enable the assessee to make a representation or seek recourse to a remedy in law;

5. In exercising the powers of stay. the Income Tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the public duty of protecting the interest of the Revenue while the same time balancing the need to mitigate hardship to the assessee. Though the assessing officer has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order : the matter must be considered from all its facets, balancing the interest of the assessee with the protection of the Revenue."

8. Thus, it is clear that the Income Tax Officer being a quasi judicial authority should observed the parameters which are laid down by the Hon'ble High Court in various decisions and reasserted in the case of *UTI Mutual Fund vs ITO* (supra). A similar view has been taken by this Tribunal in the case of *RPG Enterprises Ltd. vs DCIT* as well as in case of *Maharashtra State Electricity Board vs JCIT*. Thus, in view of the above judicial principles we hold that the A.O has misused his powers and the action of recovery from the bank amount of the assessee is a gross violation of the directions as well as the basic rule of law and principle of natural justice. Accordingly, we direct the Revenue to refund the entire amount of Rs. 159,84,03,720/- to the assessee within 10 days from the dated of receipt of this order.

9. As regards the stay of the recovery of the demand since the assessee has already filed a writ petition in the High Court and the matter of stay of demand is subjudice before the Hon'ble High Court therefore the judicial propriety and discipline demand that this Tribunal should not venture into the subject matter which is subjudice before the Hon'ble High Court. We are conscious about the various decisions of this Tribunal whereby the recovery of demand has been stayed after giving the directions of refund of the demand illegally recovered but in those cases no stay proceedings were pending before the Hon'ble High Court. The appeal of the assessee is directed to the listed for out of turn hearing on 4.2.2014. The date of hearing of the appeal is pronounced in the open

Court and in the presence of both the parties therefore no separate notice of hearing will be issued.

10. In the result, the Stay Application of the assessee is partly allowed.

Order pronounced on this 25th day of November 2013
