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This issue contains:

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Challenging the austerity narrative

by
Nadeem Ul Haque[*]

Decades of IMF involvement has permanently changed the economic narrative in Pakistan. Our leaders, columnists and even our TV shows seem focused entirely on fiscal adjustment as well as stabilisation and argue that revenues must be increased in order to effect stabilisation. Strangely, no one seems to want growth and jobs.

Before IMF involvement, we used to talk of growth and investment. Now everyone talks only of the tax-to-GDP ratio, as if this will solve all of Pakistan's problems, and national conversation seems to be dominated by the IMF requirement of ambitious fiscal targets based on increased tax collection and arbitrary expenditure cuts. Growth, employment and development have virtually been forgotten and even development donors such as the World Bank, the Asian Development Bank, DFID and USAID have nothing for growth and development. Having succumbed to IMF pressure, even these agencies push only for revenue collection and severe fiscal correction. The little development work that they do is now limited to social protection and some health and education.

But should we be so focused on increasing our tax-to-GDP ratio? Is it a matter of belief or something we can discuss?

To my mind, this tax-GDP issue is austerity thinking. The world has now recognised the harmful effects of the policies of austerity; we have not.

It is said that our tax-to-GDP ratio is nine percent, which is, by international standards, very low. To justify this proposition, these commentators point to selected countries with a higher tax-to-GDP ratio without establishing the basis for a comparison. Are they implying all countries should have the same tax-to-GDP ratio? Just examine the advanced countries: the US has a tax-to-GDP ratio of 27 percent, UK 39 percent, Sweden 46 percent and Germany 41 percent. Does this mean the US should increase its ratio to 46 percent? Since the US actually wants to lower taxes, let us admit that there is no theory that advocates all countries having the same tax-to-GDP ratio. And those who use this argument in the media should be reminded of this simple truth.

If we really want to compare our tax performance to that of others, perhaps we need to examine what the advanced countries did when they were at our level of development. In 1901, the US and UK had a per-capita income of about $4,500 and $3,700 respectively and their tax-to-GDP ratios were seven percent and 10 percent. Through most of the World War I, the UK tax-to-GDP ratio remained in the low teens.

Pakistan currently has a per capita income of around $1,000; should we really be aiming for OECD-level tax rates? Why then have we focused on

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[*] The writer is former deputy chairman of the Planning Commission.

the tax-to-GDP ratio for the last few decades and not on growth? And even if – for the sake of argument – we were to achieve a tax-to-GDP ratio of 15 percent, would it generate higher growth and more employment for people?

All over the world, people view a tax-cut as a policy instrument for stimulating growth. Only in Pakistan is it assumed that a tax increase will stimulate growth. For some strange reason, commentators in the media think higher taxes will spur investors to invest more, workers to work harder and savers to save more. This strange theory, which belies all received wisdom as well as empirical evidence that taxes take from production and don't increase it, is frequently propounded in Pakistan by commentators too lazy to go beyond simplistic donor propositions.

The other commonly held belief is that more revenues will inspire the government to spend the money wisely and judiciously and provide more public goods such as education, health and infrastructure. But this argument runs counter to history: in 2002, we got a rescheduling, which gave us the ample fiscal space required to do all these good things. But we ended up with a humungous energy deficit, bankrupt PSEs, failing education systems and deteriorating law and order situation. Clearly, we were unable to make the investments required for public goods. So why do we continue to hold on to the assumption that more revenues will automatically increase welfare through better public goods generation?

Another theory that donors love to put forward is that when people pay taxes, they have (or will have) more control over governance. However, this fee-paying theory of revenue derogates from literature: despite continuously increasing taxes, the Sheriff of Nottingham ceded no representation to the people.

This brings us to the heart of the problem: taxes follow a social contract and a certain need for creating public goods. Throughout history, the sovereign's power to tax has been severely curbed through parliaments and popular vote. Kings and governments had to prove a need to tax by identifying clear public welfare programmes that the tax was intended to finance; this was at the heart of enlightenment thinking. Now it seems, the people don't need to know what the taxes are (or will be) used for. Without any regard for public welfare or any questions about the purpose of taxation, we are expected to give the government more money to reach the 15 percent tax-to-GDP target.

Interestingly, people everywhere in Pakistan are intuitively more in line with enlightenment thinking than the commentators. A frequent lament across the country is: "What are my taxes used for? Why do I have to pay high taxes if I get no public services?" (Remember, no one claps when the Sheriff of Nottingham raises his tax rate because everyone knows he is collecting for his own welfare.)

And equally surprisingly, donor philosophy remains anti-enlightenment and forces all Pakistanis to pay more regardless of the quality and quantity of public service. International observers have benchmarked our

poor governance and failed public service delivery mechanisms in every which way. Should we hand such a system more revenues? What has the system done when it had more money? It set up poor quality projects that did not deliver a social return. It also engaged in self-serving: maximizing perks, plots and welfare schemes for those within the system. It further created unnecessary and unprofitable public sector enterprises.

When I raise this argument with donors, they point to the need to raise taxes to meet with the variety of donor initiatives they want, ranging from social protection to moneylaundering to environment. So we should tax our people more, in order to follow agendas determined in dark corridors where we had no say?

Growth is about productivity, investment, jobs and opportunity. Educated kids without jobs and opportunity remain unemployed and potentially a destabilizing force in society. I don't understand why people think increased revenues will lead to growth. It is a spurious argument and should be dismissed accordingly.

Taxes and revenues should be increased in line with what enlightenment has taught us. Our governance system needs reform to make it responsive to people's needs and to develop its capacity for public service delivery and for public policy. Reform will also remove the mechanisms of rent-seeking such as allotting perks and plots and aligning incentives for public servants with public service delivery. When people see a responsive and capable public sector, their willingness to pay will increase.

Public service delivery reform must come before revenue collection. Unfortunately, we have got it wrong.

Italy

Financial Transaction Reporting Intensifies Italian Tax Compliance Drive

The much-delayed, but much-heralded, reporting rule by which banks and other financial institutions are obliged to report their clients' transactions to the tax authorities as part of the Government's efforts to increase tax compliance, entered into operation on October 31, 2013.

The regulation, which was a provision within the Mario Monti Government's "Salva Italia" legislation in 2011, looks to develop taxpayers' financial information available to the Italian Revenue Agency so as to produce a detailed anti-evasion database. The Italian financial sector has been working for some time on the data required by the Agency, but by the end of last month had to begin its transmission.

The financial intermediaries that need to transmit their customers' business include banks, the Italian post office, and investment managers and advisors. The services covered by the measure include current and savings accounts, debit and credit cards, over-the-counter business, certificates of deposit, derivatives and safe deposit boxes (by the annual number of access visits), but not pensions and loans.

The financial transactions entered into by their customers in 2011 had to be reported by 31 October this year, having been previously delayed. Those entered into in 2012 will need to be transmitted by March 31, 2014. Thereafter, the annual regime will then be that each year's transactions will be reported by April 20 – for example, the 2013 data should be sent by April 20, 2014.

It has been decided that each institution must indicate the details of the relationship, including all of the individuals or companies involved with it. The information to be provided will contain the account balance as at January 1 and December 31 each year; the opening balance, if the account was opened during the year, and the closing balance, if the account was closed during the year; and the total value of payments into and out of each type of relationship during the calendar year.

The Agency will be sent the data over a new computerized file transfer platform, nicknamed SID (Sistema di interscambio flussi dati), and, it is assured, will keep the information on a strictly private and confidential basis.

It is intended, however, that the data will be used to produce a specific list of those taxpayers considered to be a major tax evasion risk, on the basis of criteria established by the Agency, and will be used to compare taxpayers' spending and investing habits against their completed individual and corporate income tax returns. – *Courtesy tax-news.com*

United States

US Congress Looks to Consolidate Education Tax Credits

Diane Black (R – Tennessee) and Danny Davis (D – Illinois), the Chair and Co-Chair of the Tax Reform Working Group on Education, one of eleven separate groups established by House of Representatives Ways and Means Committee, have introduced a bipartisan bill to consolidate the various existing United States education tax benefits.

"The Student and Family Tax Simplification Act" is designed to make it easier and simpler for families to afford the costs of higher education by consolidating four separate tax provisions into one improved and more robust education tax benefit.

"Streamlining the number of education provisions and retooling those that are most effective allows us to simplify the code and reduce some of the confusion that exists in the tax code today," said Black. "Our bipartisan bill makes commonsense reforms to make the tax code simpler and fairer when it comes to helping Americans afford the cost of a college education."

"This bipartisan bill simplifies our tax code and strengthens our investment in students and their families, expanding aid for the lowest-income students," added Davis. "The improvements within the bill will help increase college affordability, access, and completion."

The legislation consolidates four existing education provisions – the Hope Credit, the American Opportunity Tax Credit (AOTC), the Lifetime Learning Credit and the tuition deduction – into a single, modernized and strengthened AOTC.

The new AOTC, which would be permanent, would provide a 100 percent tax credit for the first USD2,000 of eligible higher education expenses and a 25 percent tax credit for the next USD2,000 of such expenses (for a maximum credit of USD2,500). The first USD1,500 of the credit would be refundable, meaning

that families could receive the benefit regardless of whether they have a federal income tax liability.

The credit, which could be used to offset expenses for tuition, fees and course materials, would be available for up to four years of post-secondary education at qualifying universities, community colleges, and trade and vocational schools.

The credit would begin to phase out for families with incomes between USD86,000 and USD126,000 (half those amounts for single individuals), ensuring that the credit provides the greatest benefit and value to low- and middle-income families.

The Chairman of the Ways and Means Committee, Dave Camp (R – Michigan) noted that "During the working groups, Diane Black and Danny Davis made it clear that the complexity of the tax code was actually making it harder for families to afford the cost of higher education. They addressed that challenge head on and developed a solution to make the tax code simpler and fairer for families, making it easier for families to send their kids to college." – *Courtesy tax-news.com*

France

France Observes "Influx" Of Voluntary Tax Declarations

According to French rapporteur Yann Galut, around 4,000 taxpayers have submitted a voluntary declaration to the country's Tax Administration over the course of the past four months, to regularize their tax situation.

The "influx" of requests followed publication on June 21 of a circular, drafted by French Budget Minister Bernard Cazeneuve, detailing the exact conditions governing the treatment of voluntary declarations submitted by French taxpayers with untaxed accounts held abroad.

Galut anticipated that a further wave of voluntary declarations will follow, especially given that banks in Switzerland are currently encouraging their clients to regularize their accounts with the tax authorities. Consequently, Galut advocated that a transition mechanism should be introduced to ensure that taxpayers are still able to fulfil their domestic tax obligations once the Government's anti-tax evasion bill enters into force. Taxpayers should be accorded a further few months in which to come forward voluntarily, perhaps even up until June 2014, Galut suggested,

while emphasizing that the decision is ultimately the Government's.

Welcoming the latest statistics, French Budget Minister Bernard Cazeneuve highlighted the fact that if requests continue to be submitted at the current rate, the Government will realize unprecedented revenue levels from the fight against tax evasion in 2014.

Taxpayers electing to submit a voluntary declaration to the French tax authorities, to regularize hitherto unreported assets held abroad, are currently able to benefit from more lenient provisions, until the Government's anti-tax evasion bill enters into force.

While the provisions do not amount to an amnesty, nor do they guarantee anonymity or entitlement to negotiation, the penalty rates for deliberately failing to meet domestic tax obligations are reduced. The rate has been lowered from 40 percent to 30 percent for so-called "active" fraudsters, and to 15 percent for "passive" offenders.

Furthermore, the annual proportional fine levied in the case of the non-reporting of wealth held abroad is to be capped at 3 percent of the value of assets for active tax evasion and at 1.5 percent for passive tax evasion. In addition to the penalties and fines due, taxpayers will also be required to settle evaded taxes.

Once the Government's anti-tax evasion law enters into force, however, no such leniency will be shown. The legislation establishes a "tax police" and provides for tough sanctions to be imposed, including a seven-year prison sentence and EUR2m (USD2.6m) fine. – *Courtesy tax-news.com*

Dar reviews progress of ongoing financial assignments

The Finance Minister Senator Ishaq Dar held meetings separately with the Chairman Federal Board of Revenue (FBR) Tariq Bajwa, Governor State Bank of Pakistan Yasin Anwar and senior officials of the Ministry of Finance to review the progress at the Finance Ministry here this afternoon.

The Chairman FBR informed the Finance Minister that there was no let up in the efforts of the FBR for achieving the revenue target of Rs 2475 billion set out by the government. Bajwa also informed the Finance Minister about the notices issued to new income tax payers as part of the campaign to increase the number of assesses by identifying new asesees. The Finance Minister expressed the confidence that FBR would continue its efforts to collect taxes and facilitate the tax payers in filing their returns.

In a separate meeting with the Governor State Bank of Pakistan the Finance Minister reviewed the Foreign Exchange reserves and the Balance of Payment position. He directed the Governor SBP to redouble efforts to increase inflows as per plan.

The Finance Minister also chaired a high level meeting which was attended by senior officials of Ministry of Petroleum and Natural Resources, Privatisation Commission, Ministry of Commerce, Board of Investment. Income support plan and senior officials of Ministry of finance.

The Secretary Petroleum informed the Finance Minister that 260mmcfd gas would be added to the system by December 2013 which would be dedicated for the power sector.

The officials of BoI gave various proposals to further improve the investment climate in the country and improve business environment. The Finance Minister directed the Secretary Income Support Programme to streamline the process of release of funds so that maximum number of families can benefit from the programme. – *Courtesy The Nation*

'NBP branches should collect customs duties'

Customs agents have urged the Federal Board of Revenue (FBR) to allow all the designated branches of the National Bank of Pakistan (NBP) to collect customs duties because the specified branches have opened the door for corruption, besides causing delay in the clearance of consignment.

In a communication sent to the Federal Board of Revenue, the Karachi Customs Agents Association (KCAA) said that their members were facing immense problems in depositing customs duties since only two branches of National Bank of Pakistan – one at the Customs House and the other one at the Nadir House – were collecting customs duties and other taxes.

Faisal Mushtaq, general secretary of Karachi Customs Agents Association, said that these branches were not enough to cater to the number of goods declaration (GD) – which were being increased manifold after rolling out WeBOC to all Off-Dock terminal, air freight unit. A taxpayer has to wait for hours in the long queue just to submit a pay order, he added.

He said that total 60 National Bank of Pakistan branches were authorised in Karachi for the tax collection. "The infrastructure is there and the issuance of user IDs to other branches can facilitate trade," he added.

Mushtaq said that the matter was pending since the launch of WeBOC replacing the Agility software. The Karachi Customs Agents Association requested the FBR to resolve the issue on priority basis and facilitate the trade community.

Ramazan Bhatti, the former member of the customs and the chief of the Commission, constituted by the Supreme Court of Pakistan in the Karachi Bad Amni Case, observed in his report that there was a massive corruption in the customs department and NBP's staff was also part of the menace.

It further alleged that the National Bank's functionaries were pocketing the excess amount to the actual duty and taxes. They were allegedly collecting Rs100 per GD at the time of deposit of taxes – at the original stage or at the time of payment of differential amount demanded by the customs as additional duties and taxes, it said. – *Courtesy International The News*

Taxing dilemma: FBR asked to simplify online tax filing system

Lahore Tax Bar Association (LTBA) has asked Federal Finance Minister Ishaq Dar, and Chairman Federal Board of Revenue (FBR), Tariq Bajwa, to remove complexities in the Pakistan Revenue Automation Limited (PRAL) system which is causing multiple problems for taxpayers.

The demand was raised at a meeting held by the LTBA, chaired by President LTBA, Qari Habibur Rehman Zuberi.

The LTBA president pointed out that the government will not be able to meet revenue targets unless the PRAL system was not made user friendly and any confusion caused by the form was not cleared immediately.

The house on the occasion adopted a resolution which called for immediate changes in the PRAL system to address problems caused to taxpayers, and expressed its dismay over the non-functioning of the system in the recent past.

The house demanded improvements in the Chief Revenue Office (CRO) in Islamabad to assist with the expansion in the tax net instead of creating unnecessary hurdles.

The house also insisted that the FBR grant permission for the submission of wealth statement as short documents while allowing submission of manual tax returns, since there are a large number of businessmen who are unable to access the online system which was recently introduced.

The LTBA president said that the association had already put forth a number of complaints to the authorities concerned but to no avail. He said that the FBR chairman should act immediately on the entire situation to remove any confusion the taxpayers are facing and ensure smooth filing of the tax returns.

The meeting was also attended by Secretary LTBA Ali Ahsan Rana, Zahid Pervaiz, Tufail Asghar, Khurram Shahbaz, Zulfiqar Ahmad and Anis Anjum.

The FBR's online tax system has been critisiced as being too complicated for the average taxpayer. Although the FBR website provides a detailed manual, many users have reported walking into deadends because of complex terminology used in the form by the FBR. The FBR has been cautioned by many groups that this may deter taxpayers, especially first time taxpayers that intend to enter the tax net, resulting in Pakistan falling short on a crucial policy performance indicator. – *Courtesy The Express Tribune*

Bikes' spare parts: RTOs told to probe ST evasion, underinvoicing

The Federal Board of Revenue has directed all Chief Commissioners of Regional Tax Offices (RTOs) to investigate

whether huge sales tax evasion and underinvoicing of imported spare parts is taking place, due to non-registration with the sales tax by certain auto sector dealers.

Sources told n Monday that the FBR has received a representation from Association of Pakistan Motorcycle Assemblers (APMA), Karachi regarding sales tax evasion and underinvoicing of imported parts by auto sector dealers. The FBR has directed the Chief Commissioners of RTOs to investigate the aspect of sales tax evasion and under invoicing by the said sector. The Board has further directed the Chief Commissioners of RTOs to submit the report on priority basis.

According to the APMA, the government should abolish the condition from buying parts from commercial importers for the assembly of motorcycles. Currently, a number of assemblers are procuring smuggled parts from the markets due to the above condition. This mis-procurement leads to illegal assembly of vehicles, resulting in substandard production of vehicles and above all creating uneven playing field for genuine players. The firms engaged in such unscrupulous activity are putting a colossal dent on national kitty through evasion of duties and taxes.

The government should immediately announce a motorcycle policy and it should contact the stakeholders who are ready to give positive suggestions keeping in view their vast experience, it said. APMA was of the view that the increase in taxes and duties would improve revenue and bring many sectors into the tax net. The businessmen had already warned the government not to impose any fresh tax as it would trigger inflation besides raising cost of doing business.

The Chinese bike assemblers have set their eyes on ministry of finance and EDB for a good policy. The assemblers are highly hopeful especially of Finance Minister Ishaq Dar due to his vast experience in running the affairs of finance ministry. Finance Minister will take such steps which would encourage assemblers to come out with new models especially replacing the decades-old 70cc bikes which do not exist in any of the country. The government should bring a change by abolishing the SRO culture as the Finance Minister promised in his budget speech.

It said that the government has also not called upon any meeting with Chinese bike assemblers and yet to discuss future road map of the two wheeler industry. In the last 14 years, Pakistan Automotive Manufacturers Association (PAMA) and PAAPAM had

strong hold in policy making of the government including tax structure. Chinese bike assemblers' body (APMA) and various Chinese vehicle manufacturers had failed to get representation in policy making.

It is high time that the government should take into account the development of Chinese bike assemblers and their thriving vendor base relating to production, sale and market share before finalising a new policy for the entire auto sector. All zero rated imports must be fixed at minimum five per cent customs duty. In auto sector, all the Input Output Ratio Certificates (IORCs), which are valid up to June 30, 2013 should not be revalidated and one customs duty on imported parts and one customs duty on CBU imports (eg for two wheelers customs duty on CKD parts (localised or non-localised) should be fixed at 25 per cent. Currently non localised parts have 10 percent customs duty and duty on localised parts is 38.75 percent. The customs duty on CBU two wheelers should not be more than 45 percent, which is currently over 50 per cent.

The government which issues lists for import through EDB to OEMs and assemblers should be abolished immediately as it was cumbersome and time consuming exercise. Besides, the entire auto sector is burdened with many SROs and notifications and there must be one policy document or the SRO or notification for entire sector which will discourage corruption.

The valuation advises and ruling issued in the last 10 years on auto sector should be scrapped immediately as they had only encouraged informal trade through various channels and mis-declaration. Due to this, a culture of smuggling of parts and other items has developed. The government should also strive hard to register all dealers of two and four wheeler including the entire auto sector stakeholders in the sales tax net.

In the last 10 years, there was huge sales tax evasion and under invoicing of imported parts due to non registration in sales tax by auto sector dealers all over Pakistan, association maintained.

It is high time that the government should frame such policies which would lure new investors for which the government has to simplify laws as there are reports of tax evasion. A uniform policy is needed. The government should also ponder on fixing an age limit of two wheelers as people still own decades old bikes.

It further opined that the exports refunds of many industries had been in doldrums as the Afghan Customs had been computerised

which did not provide a copy of the invoice of the cleared consignments to the importers. The Afghan customs was relying upon a computer generated invoices and did not provide any document on the clearance of goods to the Pakistani exporters. The government should realise that this segment of the engineering needs little power and gas for running and the government should encourage them so that more jobs could be created, it added. – *Courtesy Business Recorder*

APBF for replacing FBR with an independent institution

The executive committee of the All Pakistan Business Forum (APBF), appreciating the Supreme Court's strict orders to the Federal Board of Revenue to deal smuggling, custom duty evasion and black money with zero tolerance, has suggested the government to replace FBR with an independent institution, setting it free from any influence of the government and political victimisation, that can effectively enforce tax laws both at federal and provincial level.

The APBF Chairman, presiding over the executive committee meeting on Saturday, stated that unrest in the port city Karachi is not only disrupting the entire economic cycle but also tarnishing the image of the country and FBR role along with other agencies is vital and it should not only collect taxes but also ensure enabling environment through policies which could enhance exports, trade, industrialisation and creation of jobs.

He said that Karachi is Pakistan's economic engine and if it shuts down the whole economy will collapse. Its taxes and industrial and services sectors feed the national exchequer and its port holds important geographical significance.

The executive committee meeting attended by Imtiaz Rastgar, Yaqub Tahir Izahar, Faisal Afredi, Munir Bana and several other members, recommended that the parliament through consensus can enact laws for establishing autonomous Tax Agency that will facilitate business community to deal with single Revenue Authority rather than multiple agencies at national, provincial and local levels. The mode and working of independent FBR can be finalised under Council of Common Interest, they added. Nabeel Hashmi, however, also spoke in favour of the present chairman Tariq Bajwa, whose performance is excellent and who is known as an honest man throughout his carrier. He maintained that traders

have attached their hopes with Tariq Bajwa because of his excellent performance as Punjab finance secretary.

He said that nation has reposed trust in the PML-N by giving the new government a heavy mandate in the national general election therefore, it should give preference to the national interests at every cost and take all decisions while keeping in view the ground realities. He said that private sector of Pakistan wants to play its role for progress and prosperity of the country but for the purpose, government has to take it on board and involve policy making process.

Yaqub Tahir Izhar observed that in the prevailing scenario the FBR must be run by independent Board of Directors comprising professionals. He said if agricultural income tax and other provincial and local taxes are collected efficiently, Pakistan total tax potential can be around Rs 12 trillion. With a view to curb tax evasion and make it a department of 'Zero tolerance against corruption' and to plug estimated tax leakage of Rs 2,000 billion per annum, the executive committee endorsed the view of Transparency International, suggesting the authorities to outsource the valuation of imports to third party. The APBF Executive Committee observed that law should be made to declare tax evasion as a crime against state and punishments should be awarded by courts within a defined period.

Imtiaz Rastgar told the meeting that FBR had declared in 2012 that it had data of 3.8 million, who were not paying income tax; the FBR now should collect tax from these 3.8 million tax evaders, he demanded. The committee suggested that the CNIC should be declared as NTN number, and all citizens be made to file IT Return, even at zero income. The committee asked the FBR to devise mechanism to monitor professionals, known for not paying income tax on their real income, including architects, consulting engineers, doctors and lawyers.

Faisal Afredi stressed the need to introduce reforms in the tax department, and purchase new equipment, besides implementing unique methods to enhance the tax net. The chairman concluded that instead of depending on foreign aid or loans, the government has to accelerate economic activities, enhance industrial production, finding new destinations for Pakistani merchandise as heavy debts have already hollowed the foundations of the country. – *Courtesy Business Recorder*

S.R.O. 945(I)/2013, Islamabad, the 24th October, 2013.– In exercise of the powers conferred by sub-section (1) of section 4 and section 40 of the Federal Excise Act, 2005, section 219 of the Customs Act, 1969 (IV of 1969), section 50 of the Sales Tax Act, 1990, read with sub-section (2) of section 8, clause (ii) of sub-section (2) of section 8B, sections 9, 10, 14, 21 and 28, clause (c) of sub-section (1) of section 22, the first proviso to sub-section (1) of section 23, section 26, sub-section (6) of section 47A, sections 48, 50A, 52, 52A and 66 thereof, the Federal Board of Revenue is pleased to direct that the following further amendments shall be made in the Sales Tax Rules, 2006, namely:–

In the aforesaid Rules, in rule 5, in sub-rule (1), for the clause (a) and (b), the following shall be substituted, namely:–

"(a) in case of listed or unlisted public limited company, the place where the registered office is located;

(b) in case of other companies,–

(i) if the company is primarily engaged in manufacture or processing, the place where the factory is situated; and

(ii) if the company is primarily engaged in business other than manufacture or processing, the place where main business activities are actually carried on;

(c) in case of a person not incorporated, the jurisdiction where the business is actually carried on; and

(d) in case of a person not incorporated, having a single manufacturing unit and whole business premises and manufacturing unit are located in different areas, the jurisdiction where the manufacturing unit is located;

Provided that the jurisdiction of Large Taxpayers Units shall remain as specified by the Board:

Provided further that the Federal Board of Revenue may transfer the registration of any registered person to a jurisdiction where the place of business or registered office or manufacturing unit is located."

2. This notification shall be deemed to have taken effect from the 1st day of July, 2013.

No.PRA/Orders.06/2012, Lahore, the 1st November, 2013.– In supersession of all previous orders except the order issued in respect of the posting of the Deputy Commissioner (Legal) and Assistant Commissioner (Legal), posting of the following officers of the Punjab Revenue Authority is ordered with immediate effect:–

SR.NO.	NAME OF OFFICER	PLACE OF POSTING
1.	Mr. Shehzad Mehmood	Additional Commissioner (Enforcement-1)
2.	Mr. Naeem Hassan	Additional Commissioner (Enforcement-2)
3.	Mr. Babar Nawaz Raja	Additional Commissioner (Enforcement-3)
4.	Mr. Munir Ahmad	Deputy Commissioner (Enforcement-1)
5.	Mr. Zaka Ullah	Deputy Commissioner (Enforcement-2)
6.	Mr. Khalid Mahmood	Assistant Commissioner (Enforcement-3)

2. The serialized enforcement jurisdiction shall be construed in terms of Authority's notification No.PRA/Orders.06/2012 dated 10th September, 2013.

3. The Additional Commissioners shall exercise supervisory and other administrative and legal powers in respect of the Deputy Commissioners/Assistant Commissioner of the respective jurisdiction.

4. The officers incharge of enforcement shall, in addition to their enforcement functions, also exercise powers and hold additional charge in respect of audit functions in their respective jurisdictions. The additional Commissioner (Enforcement-3) will further continue to look after the charge of Additional Commissioner (HQs).

5. All communications, letters, notices or orders already issued or actions taken by any officer of the Authority in any of the jurisdictions specified in the said notification dated 10th September, 2013 before the issuance of this notification, shall be deemed and treated to have been validly issued or as the case may be, taken.

6. the investigations or other legal proceedings already undertaken by different officers in specific cases shall be completed by the respective officers.

C.No.4(2)ST-L&P/2011/147770-R Islamabad, the 4th November, 2013

SALES TAX GENERAL ORDER NO. 45/2013

Subject: **Amendment in STGO 13/2007 dated 13-09-2007 – allowing facility of zero-rating on supply of electricity.**

In exercise of powers conferred by clause (d) of section 4 of the Sales Tax Act, 1990, the Federal Board of Revenue is pleased to make the following further amendments in its Sales Tax General Order No. 13 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the table, after serial number 19 in column (1) and the entries relating thereto in columns (2), (3) and (4),

the following new serial number and the entries relating thereto shall be **added,** namely:–

S. #	Name of Unit	Registration No.	Consumer No.
20	M/S Alliance Textile Mills Limited	0704520200128	27144110088145U

2013 TRI 1791 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH, AHMEDABAD

Mukul Kr. Shrawat, Judicial Member and T. R. Meena, Accountant Member

FACTS/HELD

Law of jurisdictional High Court is not binding if there is a later contrary judgement of non-jurisdictional High Court. S. 22: Property used by firm in which assessee-owner is partner is not used for assessee's business & not entitled for exemption

1. The assessee, a partner in a firm, was the owner of a house property. He claimed that the house property was used by the employees of a firm in which he was a partner and that it should be considered to have been used for a business carried on by him. The assessee relied on CIT v/s. Rasiklal Balabhai 119 ITR 303 (Guj) where it was held that the annual letting value (ALV) of a godown owned by the assessee and used for the business carried on by him in partnership was not liable to be included in his total income u/s 22. However, the AO & CIT(A) relied on the contrary judgement in Prodip Kumar Bothra 244 CTR 366 (Cal) where it was held that house property income is not taxable only if the property is used for the assessee's one's own business and is not exempt if used for the business of the firm in which the assessee is a partner. On appeal by the assessee to the Tribunal HELD dismissing the appeal:

   (i) Though the jurisdictional High Court in Rasiklal Balabhai 119 ITR 303 held that the annual letting value of house property owned by the assessee and used for the business carried on by him in partnership was not liable to be included in his total income u/s 22, the Calcutta High Court has dissented from this view in Prodip Kumar Bothra 244 CTR 366 and held that the exemption in respect of house property cannot be allowed to assessee if the property is used by the partnership firm because the owner of the house property and the occupier of the property must be the same person. The Karnataka High Court in K.N. Guruswamy 146 ITR 34 (Kar) and the

Allahabad High Court in Shiv Mohan Lal 202 ITR 60 (All) & Mustafa Khan 276 ITR 602 (All) has taken the same view as the Calcutta High Court that user by a partnership firm/ HUF is not user by the assessee-owner for business purposes. In view of the divergent views expressed by the High Courts, the thumb rule that the latest decision of the High Court is required to be followed to maintain judicial discipline. As the judgement of the (jurisdictional) Gujarat High Court is earlier in point of time and the judgement of the (non-jurisdictional) Calcutta and other High Courts is later in point of time, the view expressed by the Revenue Authorities has to be affirmed and the assessee's ground dismissed;

(ii) Also, a litigant, especially the learned counsel, who is an expert, is expected to place before the Court all decisions either in favour or against him. We are constrained to note that this fair approach was not adopted in this case.

Appeal partly allowed.

ITA No. 558/Ahd/2013 (Assessment Year : 2009-10).

Heard on: 19th September, 2013.

Decided on: 11th October, 2013.

Present at hearing: M. K. Patel, A.R., for Appellant. J.P. Jhangid, Sr.D.R., for Respondent.

JUDGMENT

Per Mukul Kr. Shrawat:– (Judicial Member)

This is an appeal filed by the assessee arising from an order of learned CIT(A)-I, Surat, dated 17.12.2012 and the grounds raised are as under:

> *"That on facts and in law, the learned CIT(A) has grievously erred in confirming the addition of Rs.42,000/- made as deemed income from house property on estimate basis only."*

2. Facts in brief as emerged from the corresponding assessment order passed u/s. 143(3), dated 21.11.2011 were that the assessee in individual capacity has shown salary income stated to be received from five partnership firms. The assessee has also disclosed income as a financial advisor for investment in mutual fund. The assessee has also received commission from NJ Invest Pvt. Ltd.

2.1 It is noted by the AO that the assessee has a residential flat at Shreenidhi Co-operative Housing Society Ltd, Atlhan Surat. As per AO, the assessee had not shown any "notional income" from the said residential flat. According to AO, the assessee was required to show rental income from the said flat in terms of Section 22 of IT Act which prescribes that the annual value of the property of which the assessee is an owner, then such portion of the property occupied for the purpose of any business or profession carried on by him; shall be chargeable to income tax under the head "income from house property". The AO has also mentioned that as per Section 23 of IT Act, it is prescribed that for the purposes of Section 22 the annual value of any property shall be deemed to such some for which the property might reasonably be expected to let from year to year. Hence, a show cause notice was issued asking the assessee as to why no notional income of the house property was shown by the assessee. In compliance of the show cause notice, the assessee has submitted his explanation as under:

> *"I am partner in five partnership firms and we have employed many employees. Out of them few employees are commuting to Surat from other cities of South Gujarat such as Bharuch, Navsari, Billimora etc. May times due to work load pressure or to complete time bound formalities, they are required to perform their duties till late night. In such circumstances when it is not practical for them to return to their home town and they have to stay in Surat, for their convenience and to avoid hotel expenses, I have purchased this residential flat. It is used as dwelling house for them.*
>
> *Needless to say that section 22 specifically excludes from its charge, income from any property which is used by the owner for the purpose of any business.*
>
> *(2) That this flat is located in "B" Class locality of Surat City. The area of the said flat is about 695 sq fts. It is obvious that it was not meant for my residential purpose.*
>
> *In view of what has been stated above, it is evident that there is no need for any addition in respect of the issue mentioned above."*

3. The AO was not convinced and held that the assessee was unable to prove that flat was indeed used for the business purpose of the assessee. It was mentioned by the AO that local inquiry was conducted and it was found that nobody was staying in the said flat. The AO has adopted Rs.5,000/- letting value and the ALV was computed as under:

> *"In view of the above facts, the Annual Letting Value of the flat for the whole year is worked out by adopting Rs.5,000/- per month as notional income as under:*
>
> *Rs.5,000/- per month (for 12 months)* *Rs.60,000/-*

Less : Deduction u/s 24(a) @ 30%	*Rs.18,000/-*
Annual Letting Value	*Rs. 42,000/-*

After allowing deduction u/s 24(a), the Annual Letting Value of the flat which comes to Rs.42,000/- is added to the total income of the assessee as deemed income from House Property."

4. When the matter was carried before the First Appellate Authority, the assessee has placed reliance on *CIT vs. Rasiklal Balabhai*, 119 ITR 303 (Guj). But learned CIT(A) has held that in the case of *Prodip Kumar Bothra*, 244 CTR 366 (Cal), it was held that the house property income is not taxable only if the property is used for one's own business and not exempt if used for the business of the Firm in which the assessee is a partner. It was concluded by learned CIT(A) that the assessee had not established that the property was used by the staff member, therefore, action of the AO was confirmed by rejecting the ground of the assessee.

5. With this factual background, we heard both the sides. The undisputed fact is that the assessee is a partner in certain firms as is evident from the computation of total income, wherein the assessee has shown the interest earned on the capital involved and the remuneration received from the firm. It is also not in dispute that the assessee is the owner of five properties out of which one property was declared as self occupied. In respect of other properties, the assessee has also claimed that those were self-occupied properties. However, in respect of the property in question, the AO has invoked the provisions of IT Act as stated (supra) and determined the annual value of the property. Now, the question is that in a situation when the assessee is claiming that the flat in question was used by the employees of a firm, in which the assessee is a partner, hence, no rental income was charged, then whether it was justifiable on the part of the AO to assess deemed property income in the hands of the assessee. This question was raised in the past and also addressed by several High Courts. As far as the decision of respected jurisdictional High Court is concerned, pronounced in the case of Rasiklal Balabhai, 119 ITR 303, it was held that the annual letting value of the godown owned by the assessee and used for the business carried on by him in partnership was not liable to be included in his total income u/s. 22 of IT Act. At this juncture, it is worth to mention that a litigant, especially the learned counsel, who is an expert, is expected to place before the Court all the decisions either in favour or against him. We are constrained to note that this fair approach was not adopted in this case. On the other hand, a decision of Hon'ble Calcutta High Court has been cited by learned CIT(A) in the case of Prodip Kumar Bothra (supra), wherein it was held that the exemption in respect of house property cannot be allowed to assessee if the property is used by the partnership firm because in the opinion of the Hon'ble High Court the owner of the house property and the occupier of the property must be the same person. The Court has held that having regard to the language of Section 22,

there is no scope of any argument that owner of a property can get the benefit of occupation of partnership in a particular thereof simply because the owner is also a partner of the said firm. A partner has no individual right over the properties owned by the firm, similarly the firm has no right over the properties owned by the partners. The decision of the Gujarat High Court was, therefore, dissented. There is another decision of Hon'ble Karnataka High Court pronounced in the case of *CIT vs. K.N. Guruswamy*, 146 ITR 34, wherein the property was owned by the assessee which was used by a firm in which the assessee was a partner for the purpose of the firm's business. The Court has held that the notional income from the house property was to be included in the total income of the partner. The decision of Gujarat High Court was dissented. There is a decision of Hon'ble Allahabad High Court, viz., *CIT vs. Shiv Mohan Lal* 202 ITR 60 (All.), wherein HUF was the owner of the property and the property was used for the business purpose by partnership firm in which the assessee as a karta was partner. The property was used by the partnership firm. No rent was charged by the assessee HUF. According to Hon'ble Court, the assessee HUF was not the user of the property for its own business. The annual letting value was, therefore, held as assessable in the hands of the assessee HUF. Interestingly again an order was pronounced by Hon'ble Allahabad High Court in the case of *CIT vs. Mustafa Khan*, 276 ITR 602, wherein it was held as under:

> *"The income from hose property owned by an assessee and used in business carried on by the firm in which the assessee is a partner would qualify for exemption as provided in Section 22 of the Income Tax Act, 1961.*
>
> *There is no relationship of master and servant between a partner who carries on the firm's business and the firm. The firm is not the employer of the partners and similarly the partners are not employees of the firm. The partners are the co-owners in the firm's property. Occupation in terms of section 22 will also include "occupation" by the owner along with the other persons. Hence a partner owning house property used by the firm for business purposes, in which he is also a partner is entitled to exemption in respect of the property occupied by the firm in view of Section 22."*

6. In the light of the above cited precedents, one thing is apparent that divergent view have been expressed by the Hon'ble Courts what is to be charged u/s.22 of the IT Act is the annual value of the property, irrespective of the fact whether or not any income is either actually received or accrued to the assessee. Since, the Hon'ble High Courts have expressed different views, therefore, we have to apply a thumb rule in respect of the applicability of the precedents cited. A thumb rule is that a latest decision of the Hon'ble High Court is required to be followed to maintain the judicial discipline. We have noted the decision of Hon'ble

Calcutta High Court pronounced in the case of Prodip Kumar Bothra, 244 CTR 366 (Calcutta) is dated 15th July, 2011 wherein the decision of the Hon'ble Gujarat High Court pronounced in the case of Rasiklal Balabhai (supra) was dissented from. The Hon'ble Calcutta High Court has followed the decision of Karnataka High Court and several other decisions and thereafter came to the conclusion that the assessee cannot pray for exclusion of the income of the property occupied by a partnership firm. The Hon'ble Court has expressed the view in favour of the Revenue and held that by operation of Section 22 of IT Act income from house property is chargeable in the hands of the assessee. Resultantly, the view expressed by the Revenue Authorities is hereby affirmed and this ground of the assessee is dismissed.

7. Ground No.2 is reproduced below:

> *"That on facts and in law, the learned CIT(A) has grievously erred in confirming the disallowance of Rs.1,98,435/- out of expenses incurred wholly and exclusively for earning taxable income."*

8. The assessee has claimed commission expenditure of Rs.2,83,479/- The nature of income of the assessee is "financial advisor in the field of mutual fund". The assessee has earned commission income in respect of investments made by the parties. The assessee has also claimed salary to two employees and the AO has inquired the nature of work from those employees. The AO has concluded that most of the expenditure was not related to the business of the assessee, therefore, only 30% of the expenditure was allowed and 70% of the expenditure was disallowed. In the result, an addition of Rs.1,98,435/- was made which was confirmed by learned CIT(A).

9. Having heard the submissions of both the sides and after considering history of the case, we have noted that merely an estimate was applied by the AO. It appears that 70% of the expenditure was disallowed by the AO which appeared to be towards higher side in a situation when one estimate is to be pitted against another estimate; than it is reasonable to adopt a fair estimate. Considering the nature of the business of a tax payer, we therefore direct that 50% of the expenditure is to be allowed and, therefore, the balance 50% shall be disallowed. In this manner, the assessee shall get part relief in respect of disallowance made by the AO. Resultantly, this ground of the assessee is partly allowed.

10. In the result, the assessee's appeal is partly allowed.

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