Tax Review/Taxation
Daily Alert Service

Huzaima & Ikram
December 06, 2013

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This issue contains:

Kind Regards,

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United States

IRS Reports Over 122m Returns e-Filed in 2013

The United States Internal Revenue Service (IRS) has announced a milestone for its e-file service – more than 122m individual tax returns being e-filed during 2013 – while the Treasury Inspector General for Tax Administration (TIGTA) has issued a report confirming that the agency's Modernized e-File (MeF) system has successfully replaced the previous system.

In the 2013 tax year, the IRS received more than 45.2m returns from those who prepared and e-filed their own returns, up from 43.2m a year earlier, an increase of 4.6 percent. In addition, e-filed returns from tax professionals increased slightly, totaling more than 77m returns.

Whether self-prepared or prepared by a tax return preparer, 91 percent of all tax returns filed by individuals are prepared on computers using tax preparation software, which has improved the accuracy of those returns.

Other highlights from the new filing season statistics show that, during 2013, the IRS issued more than 109m refunds worth almost USD300bn; almost 77 percent of refund recipients chose to receive their refunds through direct deposit; and more people are using the IRS website to get answers, file their returns and resolve issues. So far in 2013, that website has been accessed more than 430m times, up almost 24 percent compared to the same time last year.

At the same time, TIGTA concluded, in its report, that the IRS's MeF system has successfully replaced its previous e-file system as the primary electronic filing platform for individual tax returns during the 2013 filing season, and has processed most tax returns correctly.

The MeF platform is designed to provide a single method for e-filing business and individual tax returns, forms and schedules, and real-time processing of tax returns and extensions that should improve error detection, standardize business rules, and expedite tax return acknowledgments to taxpayers.

"The MeF project has been a labor-intensive effort lasting more than a decade to revolutionize the way taxpayers transact and communicate with the IRS," said J. Russell George, the TIGTA. "So the latest fruit of this effort, the successful migration of processing all individual tax returns to this system and retirement

of the legacy e-File system, can certainly be viewed as a significant milestone for the IRS." – *Courtesy tax-news.com*

Argentine

Argentines Hit With Foreign Credit Card Tax

Argentina has increased a tax on overseas credit card transactions in time for the southern hemisphere's summer holiday period.

The government lifted the tax to 35 percent from 20 percent in an effort to curb a decline in the country's foreign currency reserves.

Argentina's central bank reserves have fallen by 29 percent this year to USD30.9bn as they are used to pay international debt and import energy. The reserves could drop to below USD30bn by the end of 2013 as they have been declining at a rate of about USD1bn a month throughout the year.

Cabinet Chief Jorge Capitanich said that tourism is responsible for a "drainage" in foreign currency and "we need to be very careful in order to guarantee the inflow of semi-finished and basic goods." Tourism has accounted for outflows of USD6bn each year since 2012.

Last month the country revealed its plans to increase taxes on high-end cars and other imported luxury goods in an attempt to conserve its reserves of US dollars. – *Courtesy tax-news.com*

Germany

German Union Rules Out Regional Inheritance Taxes

The German tax officials' union DSTG has vehemently rejected the idea of replacing a uniform national inheritance tax with regional variations, as a means of encouraging "competitive federalism" in Germany.

During a recent symposium on the future of inheritance and gift tax in Germany, discussing a feasible and constitutional reform of the tax, organized by the German tax advisor's institute DWS, the DSTG union opposed the idea of giving the federal states in Germany the autonomy to determine their own inheritance tax laws and regulations.

Chairman of the DSTG, Thomas Eigenthaler, made clear that such a measure would merely add yet another layer of complexity to the German tax law. Regionalizing inheritance tax would be "a false

signal to Europe," given current efforts at European level to clamp down on undesirable, harmful tax competition between states, Eigenthaler insisted. It would therefore be extremely damaging to consider rekindling "aggressive tax competition" between the federal states, he argued.

Furthermore, Eigenthaler maintained that the proposal would not fit in with plans to introduce a national tax software system in Germany. "Konsens" is a project designed to unify the German Tax Administration's software.

Concluding, Eigenthaler advocated that a national inheritance tax should have a wider tax base and low tax rates, and emphasized that there must be comprehensive clarity regarding the regulations, so as to avoid any unnecessary, lengthy, and costly litigations. – *Courtesy tax-news.com*

FBR to recall its officers serving on deputation

The Federal Board of Revenue has decided to recall its officers who are serving on deputation in other government departments/ organisations for the period of more than three years due to acute shortage of officers (BS-17 to BS-20) in FBR headquarter.

The FBR on Thursday has issued a notification in this regard. According to the notification, the officers who have already completed five years of deputation in other departments, as a rule, are required to report back immediately to their parent department. As for the officers having completed initial period of three years, the FBR for the aforementioned reason shall not extend the period of deputation beyond the three years. All the officers of BS-17 to BS-20 may be informed about this policy, it added.

Similarly, the notification stated that chief Commissioner/ Director Generals/ Chief Collectors/ Collectors are also requested not to recommend any officer for deputation for the reason mentioned above. – *Courtesy The Nation*

17% growth in tax collection witnessed in first quarter, Senate told

Finance Minister Ishaq Dar in a written reply told the Senate on Wednesday that 17 percent growth has been witnessed in tax collection during the first quarter of current financial year as compared to the previous year. The Senate resumed its session with Deputy Chairman Sabir Ali Baloch in the chair. Ishaq Dar said the Federal Board of Revenue (FBR) had set target of 509 billion rupees in tax collection for the first quarter. It achieved the revenue target by 95 percent. The shortfall is to the extent of five percent but if reflects a growth of 17 percent as compared to the previous year. He said the government is taking a series of steps to enhance revenues and achieve the assigned annual target of tax collection. Measures include broadening of tax base, strengthening tax audit, taxpayers' facilitation and administrative improvement initiatives. Ishaq Dar said an amount of 19.9 billion rupees was also issued as refunds in the first quarter. To another question, the minister said the US government has reimbursed 10.775 billion dollars on account of war on terror. He said under Kerry Lugar Bergman Legislation, the US has so far disbursed 3.827 billion dollars . The House was informed that no loans were taken to clear circular debt amounting to 500 billion rupees . During question

hour, Minister of State for Privatization Khurram Dastagir Khan on behalf of the finance minister told the House that transactions such as issuance of five years Pakistani investment bonds and cash payment out of federal consolidate fund were carried out to settle the power sector circular debt. He said in the first phase a payment of 341 billion rupees was transparently made to 31 entities. The state minister said that payment of circular debt helped increase electricity generation and set the wheel of economy into motion. – *Courtesy www.hispanicbusiness.com*

Rescinding a rescinded SRO: inquiry officer absolves FBR Member of charges

A fact-finding inquiry of the Federal Board of Revenue has already given clean chit to FBR Member Tax Policy Shahid Hussain Asad for rescinding an already rescinded SRO pertaining to fertiliser sector, during his posting as Member (Inland Revenue) FBR, causing no loss to the national exchequer.

Sources told here on Thursday that a Commissioner Inland Revenue (Appeals Zone-II) Karachi alleged that the rescinding of already rescinded SRO, by Shahid Hussain Asad during his posting as Member (Inland Revenue) FBR has caused loss to national exchequer. The fertiliser sector was required to pay sales tax on different types of fertilisers on fixed values under SRO.103(I)/2005, dated 03.02.2005 and SRO.15(I)/2006 dated 06.06.2006. Both these Notifications were rescinded vide SRO. 313(I)/2011 dated18.04.2011 duly published in the official gazette. With rescinding of SRO.103(I)/2005, dated 03.02.2005 and SRO 15(I)/2006, dated 06.06.2006, the fertilisers sector was required to pay sales tax on market prices of the fertilisers mentioned in the said SROs.

The fertiliser sector approached RTO, Multan with a request to allow them exemption under section 65 of the Sales Tax Act, 1990 for the period from 15.03.2011 till 07.01.2012 as they only came to know about the rescinding of SRO 103(I)/2005, dated 03.02.2005 and SRO 15(I)/2006, dated 06.06.2006 on 08.01.2012. The fertiliser sector kept on paying sales tax on fixed price till 07.01.2012 and thereafter, started paying sales tax on market price. The CIR has alleged that this step of FBR has illegally granted favour to the fertiliser sector.

The factual position stated by the complainant CIR with reference to the two SROs is correct, however, the conclusion drawn by him

that SRO.594(I)/2012 dated 01.06.2012 has illegally granted favour to fertiliser sector is totally misconceived and depicts sheer ignorance of law, sources said.

The actual position regarding the allegations levelled by CIR is that during the Budget exercise for 2012-13, it was decided to rescind redundant and ineffective SROs to reduce the number of active/effective SROs related to sales tax and federal excise. In this process, six Notification of FED and five Notification of sales tax were identified for rescinding on the basis that either they have become redundant or are inconsistent with the current fiscal policy. The five Notifications of sales tax identified for rescinding included SRO.103(I)/2005, dated 03.02.2005 and SRO.15(I)/2006 dated 06.06.2006, which had earlier been rescinded through SRO.313(I)/2011 dated 18.04.2011. This was an inadvertent mistake. The conclusion emanates from the fact that despite issuance of SRO.594(I)/2012 dated 01.06.2012, the legal position in the matter remains the same ie SRO.103(I)/2005 dated 03.02.2005 and SRO.15(I)/2006 dated 06.06.2006 stood rescinded vide SRO.313(I)/2011 dated 18.04.2011. It has to be realised that once a notification is rescinded, it is no longer in field for any modification, amendment, updating, and extension or rescinding. Rescinding of the already rescinded SROs through SRO 594(I)/2012 dated 01.06.2012 did not revive in any way the already rescinded SROs, contrary to the opinion of the complainant that the SRO under consideration was superfluous and a nullity in the eyes of law to this extent. This conclusion is strengthened by the opinion given by the Law, Justice and Parliamentary Affairs Division dated 8th April, 2010. No right has accrued to the fertiliser manufacturers to claim the benefit which in the opinion of the complainant has been illegally granted to them.

In view of the facts narrated above and the examination of record it is quite clear that rescinding of the already rescinded SRO through issuance of SRO.594(I)/2012 by Shahid Hussain Asad, the then Member (Inland Revenue), FBR was an inadvertent mistake and it neither modified, amended, updated and extended or rescinded the already rescinded SROs, nor did it revive in any way the already rescinded SROs 103(I)/2005 and 15(I)/2006, sources said.

A fact-finding inquiry was conducted by former FBR Chairman Ali Arshad Hakeem and the inquiry officer completed the inquiry in February 2013 wherein it was concluded that no loss was caused to

the revenue, due to rescinding of the already rescinded SROs. The second rescinding of the already rescinded SROs has no legal standing. Despite issuance of SRO 594(I)/2012, dated 01.06.2012, the legal position in the matter remains the same ie SRO 103(I)/2005 and SRO 15(I)/2006 stood rescinded vide SRO 313(I)/2011 dated 18.04.2011. A Notification once rescinded, is no longer in field for any further modification, amendment, updating and extension or rescinding. SRO 594(I)/2012 dated 01.06.2012 did not revive in any way the already rescinded SRO, nor it gave any right to the fertiliser manufacturers to claim any illegal benefit.

The allegations against Shahid Hussain Asad are therefore, baseless, concocted and seems to be based on personal grievances, the fact finding inquiry said.

The loss was caused by the then Commissioner Multan holding jurisdiction over the cases of the fertiliser manufacturers under consideration. He should have enforced compliance of the SRO 313(I)/2011, dated 18.04.2011. He entertained the plea of the companies that they were not aware of the rescinding of the relevant SROs and deliberately kept the application filed under section 65 of the Sales Tax Act and matter of recovery pending. He should have brought the matter of rescinding of already rescinded SROs to the attention of FBR by pointing out the inadvertent mistake at relevant time during his posting in RTO Multan but he did not point it out till 01.11.2012. The factual position is that the delay in collecting the government revenue amounting to Rs 1190 million was solely on the part of the complainant CIR himself, inquiry committee said.

It would have been better if NAB had inquired from Chairman/Secretary Revenue Division before proceeding further on any frivolous complaint by any one which can cause irreparable loss to the reputation and career of an officer, sources added. – *Courtesy Business Recorder*

ST regime: FBR acts to tackle 11 major risk areas

The Federal Board of Revenue is taking new policy and administrative initiatives to tackle 11 major risk areas in the sales tax regime, including fake sales/exports, causing massive revenue loss to the national kitty.

Sources told here on Thursday that the unscrupulous sales tax registered persons are using 11 methods within the sales tax

regime for evasion. If the FBR is able to plug these 11 loopholes, revenue leakage of sales tax could be checked to a great extent. In other words, these are 11 techniques used by sales tax registered persons to avoid payment of sales tax.

The FBR has identified following risk areas in sales tax: Fake input tax adjustment; fake input tax on domestic purchase; suppression of sales; fake exports; non-adjustment of value addition tax; fake sales to avoid 1 percent further tax; non-adjustment of withholding tax; misdeclaration of section 8B of the Sales Tax Act to avoid restriction of 90 percent input tax; non-relevance of input goods with output goods; non-compliance of section 73 of the Sales Tax Act for payment through banking instruments and circumventing of taxable purchase to evade payable on purchases from unregistered persons.

According to the FBR, the sales tax operates under self assessment and self-deposit and it involves multiple transactions from buyers and sellers of different tax offices. Due to multiple level of transaction, input lax credit verification is a major challenge in VAT. Conventional audit verifying these transactions is very cumbersome and protracted procedure.

As per sources, there was no centralised systematic return processing prior to Crest. There is disconnect in buyer and their suppliers' on input tax credit. The initial capital in registration was not linked with the subsequent return processing. Importers were misdeclaring their categories for non-payment of 3 percent value addition tax on commercial imports. There was no on-line system to verify exports.

The FBR has developed and implemented an integrated IT system known as Computerised Risk Based Evaluation of Sales Tax (Crest) for processing and assessing returns, which is operational. The system was run as pilot project in Lahore, and last month, it has been rolled out to the whole country. The objective is to have an effective, risk-based, automated compliance model that minimises wrongful adjustment of input tax and ensures correct payment of refunds.

The system initiates risk-based return processing, by cross-matching each transaction in purchases, sales and payment. Firms' reported values of effective rates, input-output ratios and value addition will be compared to sectoral weighted averages, thereby arriving at risk-based deviations, sources said.

Sources said that the input tax adjustments will be checked from entry into the economy to exit of goods to final consumer or for export. The different declarations such as of import, export, purchases and sales shall be made subject to verification through the system.

The refunds will only be processed on the basis of such purchases and sales as have been cleared through the system.

The system provides no discretion to any officer dealing with the system, risk scores are calculated automatically, and the system will assign cases to officers for follow-up with no discretion on their part, thereby eliminating a key opportunity for corruption through collusion between tax officers and taxpayers.

The system will also maintain a log of the performance of the officers performing their functions in the field to enable effective monitoring of officers' performance by their superiors. Efforts are underway to strengthen the system. An FBR action plan to remove glitches and to make it more user-friendly and effective will ensure a full-fledged operationalisation by March 2014, sources added. – *Courtesy Business Recorder*

KCAA seeks to implement waiver of demurrage in true spirit

Faisal Mushtaq, General Secretary, Karachi Customs Agents Association (KCAA) in a press release stated that since the announcement of waiver of demurrage charges by the Ministry of Ports and Shipping on account of the strike called by transporters, no proper communication to private terminal operators ie PICT, KICT and QICT has been made and not a single waiver has been allowed.

As the situation at PICT is getting worst day by day and beyond the control, a delegation of KCAA met the Chief Executive, PICT, Captain Zafar Awan and in the result of the said meeting, PICT has allowed waiver of 15 percent demurrage for the deliveries which are made prior to December 9 (Monday) by 7.00am. Further, truck which will enter before 12.00am, the demurrage of next day will not be charged.

In view of the above situation, Faisal Mushtaq requested the members to take out their deliveries and take advantage of this waiver. He further reiterated that the waiver of demurrage made by the Ministry of Ports and Shipping should be implemented in

its true spirit as matter of fact more than 80 percent of cargo belongs to private terminal ie KICT, PICT and QICT. – *Courtesy Business Recorder*

Government unlikely to achieve fiscal deficit target: Rs 68 billion tax shortfall seen

The government is unlikely to achieve 5.8 percent fiscal deficit target agreed with the International Monetary Fund (IMF) for the current fiscal year as tax authorities have shown their helplessness to achieve the budgeted revenue target of Rs2,475 billion with expected slippages on subsidies and interest payments, it is reliably learnt.

Well-placed sources told that initial indications suggest a shortfall of Rs68 billion in the FBR revenue collection target and Finance Minister Ishaq Dar is well informed of the reasons. The budgeted target of Rs2,475 billion was estimated on the assumption that the FBR would be able to collect Rs2,007 billion in last fiscal year whereas actual collection stood at Rs1,939 billion. Background interaction with senior officials also reveals that slippage on account of subsidies and interest payments are projected as a consequence of short-term government borrowing, failure to undertake reforms and tariff rationalisation in power sector.

A senior official said that from October onwards a monthly additional Rs25 to Rs30 billion is being provided to the power sector after tariff increase was put on hold by a court on technical grounds. The additional subsidy would increase the budgetary allocation if the government is not allowed to implement tariff retrospectively after winning the case, or such is the current official thinking. The short-term borrowing of the government to finance the deficit is expected to increase the cost of interest payment from the budgetary allocation for the current fiscal year.

Sources in the Finance Ministry said the Gas Infrastructure Development Cess (GIDC) collection, estimated to net Rs 38 billion in the budget, has been suspended since July and the matter is in litigation, however, the GIDC on account of gas sale is being assessed and can be recovered from the concerned gas companies in any month of the current fiscal year provided the case is decided in favour of the government.

An official said that it remains to be seen whether the government would be able to implement 0.4 percent increase in gas levy agreed

with the IMF under Extended Fund Facility (EFF) by end-December as part of the measures to reduce fiscal deficit. He said there are clear indications that containing fiscal deficit below 7 percent would be a challenge for the government. – *Courtesy Business Recorder*

FBR forms panel to review SRO regime, National Assembly informed

The National Assembly was informed on Thursday that a committee has been formed in the Federal Board of Revenue (FBR) to review the SRO regime to identify tax concessions which can be withdrawn or streamlined.

Ministry of Finance in a written reply to a question of Rai Hasan Nawaz Khan told the House that a study is being conducted on tax expenditures for which expression of interest has already been advertised. A number of professional bodies have offered to conduct the study, which are being evaluated/short-listed.

The House was told that cost of Customs duty exemption in 2012-13 was Rs 129 billion while Details of Income Tax and Sales Tax exemptions in financial year 20123-13 was Rs 119.829 billion.

Customs

A committee, chaired by Chairman FBR, has been constituted by the Finance Minister to review the concessionary regime and to chalk out a plan for minimisation of SROs. The committee shall submit a comprehensive plan by December 31, 2013, the House was informed.

It is a fact that exemptions from custom duties are allowed through Statutory Regulatory Orders (SROs) and their cost to the exchequer runs into billions. These SROs are issued under Section 19 of Customs Act, 1969 which empowers Federal Government to exempt whole or any part of customs duty chargeable on imported goods, the Ministry added.

The Ministry maintained that these SROs are issued for four major purposes: 1) To provide relief to general public (eg exemptions on import of wheat, sugar, diesel, medicines, vegetable and pulses etc), 2) To support local industry by lowering their manufacturing costs through reduction in duty on their inputs, 3) To increase competitiveness of export sector, 4) To gain benefits of trade through Free/Preferential Trade Agreements with major trading partners.

Inland Revenue

The Ministry said that the exemptions are allowed as per the policy of the government, ie to attract direct foreign investment, promote certain sectors, grant relief to taxpayers under special circumstances etc. The issuance of SROs is necessitated to streamline implementation of law and to address unforeseen events in taxation after release of Budget.

If the provision for issuance of SROs is not available, then all amendments/relief required have to be passed by the parliament which is a time consuming process. Therefore, the parliament in its wisdom has empowered the Federal Government/ Board to issue SROs, the Ministry added. – *Courtesy Business Recorder*

S.R.O. 1035(I)/2013, Islamabad, the 5th December, 2013.– The following draft of certain further amendments in the Income Tax Rules, 2002, which the Federal Board of Revenue proposes to make in exercise of the power conferred by sub-section (I) of section 237 of the Income Tax Ordinance, 2001 (XLIX of 2001). is hereby published for the information of all persons likely to be affected thereby, as required by sub-section (3) of the said section, and notice is hereby given that the draft will be taken into consideration by the Federal Board of Revenue after seven days of its publication in the official Gazette.

Any objection or suggestion, which may be received from any person, in respect of the said draft, before the expiry of the aforesaid period, shall be considered by the Federal Board of Revenue.

DRAFT AMENDMENTS

In the aforesaid Rules, in Part Ill, after Chapter VIII, the following new Chapter shall be inserted, namely:–

"CHAPTER VIIIA

Banking Companies Reporting Requirements

39A. This chapter contains rules for banking companies reporting requirements for the purpose of section 165A of the Ordinance.

39B. Definitions.– (1) In this Chapter, unless there is anything repugnant in the subject or context,–

(a) "Account Holders Deposits Statement" means Account Holders Deposits Statement as specified in Form 'A';

(b) "Banking Company Officer" means a senior officer stationed at the head office and nominated by a banking company to coordinate with the Board for provision of any information and documents required by the Board;

(c) "Credit Card Payments Statement" means Credit Card Payments Statement as specified in Form `B':

(d) "Currency Transactions Report" means currency transactions report generated and submitted by a banking company to the Financial Monitoring Unit under the Anti-Money Laundering Act, 2010 (VII of 2010)

(e) "information" includes Account Holders Deposits Statement, Credit Card Payments Statement, Written Off Loans Statement, currency transactions report, suspicious transactions report, details of any information or data of account holders through online access to central database of the banking company or any other information as required by the Board from the banking company:

(f) "reporting banking company" means a banking company required under section 165A of the Ordinance to provide to the

Board all the information and documents electronically or otherwise, mentioned in the said section;

(g) "Suspicious Transactions Report" means suspicious transactions report generated and submitted by a banking company to the Financial Monitoring Unit under the Anti-Money Laundering Act, 2010 (VII of 2010); and

(h) "Written off Loans Statement" means Written off Loans Statement as specified in Form 'C';

39C. Furnishing of information.– (1) The information, required to he furnished under section 165A of the Ordinance (other than information required under clause (a) of sub-section (1) of section 165A) shall be provided, by the reporting banking company, in the manner as specified in Account Holders Deposits Statement, Credit Card Payments Statement, Written Off Loans Statement, currency transactions report and suspicious transactions report.

(2) The information and online access required to be provided under clause (a) of sub-section (1) of section 165A, shall he provided, by the reporting banking company, through online access to its central database containing details of its account holders and all transactions made in their accounts.

(3) The information other than information provided in sub-rule (1) and (2), shall be provided by the reporting banking company as specified in a notice issued in terms of section 165A(2) of the Ordinance.

39D. Authorized Persons.– (1) Banking company officer, shall be nominated by the reporting banking company not later than thirty days of coming into force of rules contain in this chapter.

(2) Where a banking company officer is not nominated within the time allowed as specified in sub-rule (1), the President or any Principal Officer of the reporting banking company, stationed at the head office, shall be treated as banking company officer.

(3) The information required to be reported to the Board shall be provided by the banking company officer to the Chairman, Federal Board of Revenue or any officer authorized by the Chairman in this behalf.

Provided that the officer authorized by the Chairman shall not be below the rank of Member of the Board.

39E. Time of furnishing information.– (1) Every banking company officer, shall furnish to the Board a monthly Account Holders Deposits Statement and Credit Card Payments Statement as specified in Form 'A' and Form 'B' respectively, for immediately preceding calendar month within seven days of the end of the preceding calendar month.

(2) Every banking company officer shall furnish to the Board an annual Written off Loans Statement as specified in Form `C' for immediately preceding calendar year within three months of the end of the preceding calendar year.

(3) Every banking company officer, shall furnish to the Board a copy of each currency transactions report and suspicious transactions report generated by it at the time it is submitted to the Financial Monitoring Unit under the Anti-Money Laundering Act, 2010 (VII of 2010).

(4) Every banking company officer, shall furnish to the Board any information and documents in addition to those mentioned in sub-rules (1) to (3), within the time allowed by the Board.

39F. Exclusions.– (1) The information may not be provided by the banking company officer in respect of a person who holds National Tax Number and has also led return of income for the immediately preceding tax year.

(2) The information regarding the person mentioned in sub-rule (1) may be provided to the reporting banking company by the board, on 10th of every month.

FORM-A
[See rule 39B(1)(a)]

ACCOUNT HOLDERS DEPOSITS STATEMENT

REPORTING BANKING COMPANY: _____

BANKING COMPANY OFFICER: _____

INFORMATION OF PERSONS WHO HAVE DEPOSITED RS. ONE MILLION OR MORE DURING THE MONTH OF: _____

S. No.	Name	CNIC	Most recent particulars including address(es)	Amount deposited during the month	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

VERIFICATION

I, the undersigned, solemnly declare that to the best of my knowledge and belief, the information given in this statement is correct and complete;

I, further declare that I am competent to make this declaration and verify it in my capacity as nominee of the reporting Banking Company _____.

Signature_____ Name_____ CNIC:_____

FORM-B
[See rule 39B(1)(c)]

CREDIT CARDS PAYMENTS STATEMENT

REPORTING BANKING COMPANY: _____

BANKING COMPANY OFFICER: _____

INFORMATION OF PERSONS WHO HAVE CREDIT CARD PAYMENTS OF RS. ONE HUNDRED THOUSAND OR MORE DURING THE MONTH OF: _____

S. No.	Name	CNIC	Most recent particulars including address(es)	Credit Card Payment during the month	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

VERIFICATION

I, the undersigned, solemnly declare that to the best of my knowledge and belief, the information given in this statement is correct and complete;

I, further declare that I am competent to make this declaration and verify it in my capacity as nominee of the reporting Banking Company _____.

Signature_____ Name_____ CNIC:_____

FORM-C
[See rule 39B(1)(h)]

WRITTEN OFF LOANS STATEMENT

REPORTING BANKING COMPANY: _____

BANKING COMPANY OFFICER: _____

INFORMATION IN RESPECT OF LOANS WRITTEN OFF EXCEEDING RS. ONE MILLION OR MORE DURING THE CALENDER YEAR: _____

S. No.	Name	CNIC	Most recent particulars including address(s)	Amount Written Off during the month	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

VERIFICATION

I, the undersigned, solemnly declare that to the best of my knowledge and belief, the information given in this statement is correct and complete;

I, further declare that I am competent to make this declaration and verify it in my capacity as nominee of the reporting Banking Company _____.

Signature_____ Name_____ CNIC:_____

S.R.O. 1040(I)/2013, Islamabad, the 5th December, 2013.– In exercise of the powers conferred by sub-section (2) of section 53 of the Income Tax Ordinance, 2001 (XLIX of 2011), the Federal Government is pleased to direct that the following further amendment shall be made in the Second Schedule to the said Ordinance, namely:–

In the aforesaid Schedule, in Part IV, after clause (83), the following new clause shall be added, namely:–

"(84) For tax year 2013, the provision of section 177 and section 214C shall not apply to a taxpayer, if the tax paid on the basis of taxable income declared by the taxpayer for the tax year 2013 is at least twenty five percent more than the tax assessed or paid, whichever is higher, for the tax year 2012.

Provided that the taxpayer files separate proforma for the said exemption with return, in the manner specified in the circular issued by the Board.".

2013 TRI 1976 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
MUMBAI "L" BENCH, MUMBAI

B.R. Mittal, Judicial Member and N.K. Billaiya, Accountant Member

FACTS/HELD

If the contract falls u/s 44BB, incidental technical services are not assessable as "fees for technical services" u/s 9(1)(vii). Verdict in Alcatel Lucent (Del) on liability of foreign company to pay section 234B interest cannot be followed in Mumbai

1. The Tribunal had to consider two questions of law (i) whether a part of the consideration paid for a project involving installation, assembly or the like in connection with the prospecting for, or extraction or production of, mineral oils can be assessed as "fees for technical services" u/s 9(1)(vii) or the entire consideration has to be assessed only u/s 44BB? and (ii) whether in view of the verdict of the Delhi High Court in Alcatel Lucent a foreign company can be held liable for advance-tax and consequent payment of interest u/s 234B? HELD by the Tribunal:

   (i) The contract was a composite one and its main purpose was to install offshore pipelines, etc. To achieve this main purpose, the assessee had undertaken various activities which were listed down in the various articles of the contract. Those activities were incidental to the main job and were an integral part of the contract to ensure that all the pipe lines were successfully installed, commissioned, tested and complied with the standards set out in the contract. The argument of the department that the activity relating to providing technical services should be assessed as "fees for technical services" u/s 9(1)(vii) is not acceptable. When a contract consists of a number of terms and conditions, each condition does not form a separate contract. The contract has to be read as a whole. The entire consideration is assessable only u/s 44BB and no part of it is assessable as fees for technical services u/s 9(1)(vii) (Chaturbuj Vallabhdas AIR 1954 (SC) 236, Mitsui

Engg. & Ship Building 259 ITR 248 (Del), Jindal Drilling and Industries320 ITR 104 (Del) & G&T Resources (Europe) Ltd 139 TTJ 568 followed);

(ii) The argument of the department based on Alcatel Lucent USA (Del) that even a foreign company is liable to pay advance tax and consequential interest u/s 234B is not acceptable in view of the contrary decision of the jurisdictional High Court in NGC Network 313 ITR 187 (Bom).

Appeals dismissed.

I.T.A. Nos. 700 & 701/Mum/2009 (Assessment Year :2005-06).

Heard on: 26th November, 2013.

Decided on: 27th November, 2013.

Present at hearing: Ajay Srivastava, for Appellant. Hiro Rai, for Respondent.

JUDGMENT

Per N.K. Billaiya:– (Accountant Member)

These two appeals filed by the Revenue pertaining to two different assessees are directed against the two separate orders of the Ld. CIT(A)-XXXI,Mumbai pertaining to A.Y. 2005-06. As common issues are involved in both these appeals, they were heard together and disposed of by this common order for the sake of convenience and brevity.

ITA No. 700/Mum/2009

2. The Revenue has raised 3 substantive grounds of appeal which read as under:

"1. On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in directing the assessing officer to assess the total receipts of Rs. 16,22,01,626/- under section 44BB of the IT Act, 1961 holding that

(i) where the consideration for composite contract containing various terms of work at various stages of completion cannot be apportioned in part and therefore, the total consideration of such indivisible contract has to be held as income within the meaning of section 44BB of the Act.

(ii) the consideration paid for a project involving installation, assembly or the like would be the price paid for such project and cannot be termed as" Fees for Technical Services"

(iii) the sub-contract agreement is being under consideration is a composite one and the income of the assessee is taxable under section 44BB of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the assessing officer the receipts of Rs. 11, 19,02,560/- treated as" Fees for Technical Services" be included as part of total consideration of sub-contract receipt and to be assessed as per the provisions of section 44BB of the Act and also the other receipts of Rs. 3,24,40,325/- being 20% of Rs. 16,22,01,626/- to be considered as part of total consideration.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that since the entire income of the assessee was liable for deduction of tax at source under section 195 of the Act, no advance-tax was payable and consequently, interest under section234B could not be changed."

3. The assessee is a non-resident company engaged in the business of providing technical/engineering services. During the year under consideration, the assessee executed the contract with Engineers India Ltd. for laying/installation of line pipes for three pipeline projects in Mumbai High North field. In the return of income, the assessee claimed to be a foreign company incorporated in Abu Dhabi, (UAE). The assessee also claimed to be governed by the provisions of Double Taxation Avoidance Agreement (DTAA) between India and UAE. The AO carefully considered the DTAA and came to the conclusion that the assessee is not eligible to claim the benefits of the agreement for Avoidance of Double Taxation executed between India and UAE. Therefore, the assessee would be governed by Domestic Indian Taxation Law i.e. Income Tax Act 1961.

3.1. During the course of the assessment proceedings, the Assessing Officer noticed that the assessee has received payments amounting to US$ 62,54,591/- i.e. Rs. 27,41,04,186/-. These payments were received under various heads such as material, mobilization, installation etc. The AO considered these payments received by the assessee in the light of the agreement of the assessee with Engineers India Ltd., as also to the original bidding documents of ONGC. The AO also observed that the assessee has claimed that its income is taxable u/s. 44BB of the Act. However, the AO was of the opinion that considering the various clauses of the agreement relating to the scope of services rendered by the assessee, the assessee is also providing technical services. The AO further observed that the claim of deduction for mobilization, demobilization expenses by the assessee is not tenable in law as per the recent decision of the Hon'ble Uttarkhand High Court in the case of Sedco Forex International INC Vs CIT in ITA No. 99 of 1999 new No. 434 of 2001. The AO went on to compute the income by bifurcating the total payments received by the assessee under two heads (a) deemed income u/s. 44BB at the rate of 10% of Rs. 12,97,61,300/- computed the taxable income under this head as Rs. 12,97,61,30/- and (b) fees for technical services Rs. 14,43,42,885/-.

4. The assessee strongly agitated this action of the AO before the Ld. CIT(A). It was strongly contended before the Ld. CIT(A) that the assessee company, resident of UAE was entitled to be governed by the provisions of DTAA and revenue earned were offered for tax under Article-5 of the DTAA. Under Article-7 of the DTAA, the business profits of the assessee could be taxed in India only if it has a PE in India within the meaning of Article-5 of the DTAA. It was argued before the Ld. CIT(A) that the agreement has not been interpreted by the AO properly. The agreement should have been read as a whole. It was pointed out that the AO has cherry pick certain clauses of the contract and ignored the other relevant clauses thereby wrongly interpreting, understanding and appreciating the true nature of the contract. It was pointed out that the main intention/purpose of the association between the assessee and Engineers India Ltd was to install offshore pipelines, risers and risers clamps, testing etc. To achieve this main purpose, the assessee had undertaken various activities which are listed down in the various articles of the contract. It was strongly contended that these activities were incidental to the main job and were integral part of the contract to ensure that all the pipe lines are successfully installed, commissioned, tested and comply with the standards set out in the contract. The assessee relied upon various judicial decisions which have been incorporated by the Ld. CIT(A) in his order. The main contention of the assessee is that there was no separate independent services provided by the assessee. The consideration under the contract was a lumpsum amount and no separate amount has been identified for technical services.

4.1. After considering the facts and the submissions, the Ld. CIT(A) observed that the AO has considered part of the income of the assessee as FTS. The Ld. CIT(A) further observed that the assessee has entered in the sub-contract agreement with Engineers India Ltd., as a turn key contract with lumpsum consideration. It was a composite contract in which terms , consideration for work and part of contract are indivisible. The Ld. CIT(A) was convinced that the decision of the Hon'ble Delhi High Court in the case of *CIT vs Mitsui Engg. & Ship Building Co. Ltd.* 259 ITR 248 squarely apply on the facts of the assessee's case. The Ld. CIT(A) was also convinced that the consideration received in lieu of the execution of turnkey project would fall under the provisions of Sec. 44BB of the Act. The Ld. CIT(A) discussed certain judicial decisions and came to the conclusion that the receipt of Rs. 11,19,02,560/- treated as FTS by the AO should be included as part of total consideration of sub-contract receipt and deserves to be assessed as per provisions of Sec. 44BB of the Act and the balance receipt is also to be assessed u/s. 44BB of the Act.

5. Aggrieved by this, Revenue is before us.

6. The Ld. Departmental Representative strongly supported the findings of the AO. The Ld. DR drew our attention to the scope of work as provided in the sub-contract work between Engineers India Ltd and the

assessee. It is the say of the Ld. DR that work as provided under clause (i) a,b,c,d,e onwards is nothing but providing of technical services and therefore the AO has rightly treated part of the payment as fee for technical services. It is the say of the Ld. DR that provisions of Sec. 9(1)(vii) would prevail over section 44BB of the Act.

7. Per contra, the Ld. Counsel for the assessee strongly supported the findings of the Ld. CIT(A) and filed a paper book of decisions relied upon by him which contains decisions of the co-ordinate benches of the Tribunal as exhibited from page-1 to 37 of the paper book. Pointing out to the decision of the Hon'ble Delhi High Court in the case of *Jindal Drilling and Industries Ltd.* 320 ITR 104, the Ld. Counsel for the assessee submitted that in this case, the Hon'ble Delhi High Court on identical facts has held that provision of presumptive tax would apply and not section 9(1)(vii). Similar decision have been taken by the Tribunal Delhi Bench in the case of *G&T Resources (Europe) Ltd. vs DCIT* 139 TTJ 568.

8. We have considered the rival submissions and carefully perused the orders of the lower authorities and the material evidences brought on record. The entire dispute revolves around whether part of the payment received by the assessee can be considered as fee for technical services and whether the other part would be assessed under the presumptive tax of Sec. 44BB of the Act. It is not in dispute that by sub-contract agreement between Engineers India Ltd and the assessee, the assessee was given a turnkey project for laying and installation of pipe lines. It is a settled proposition of law that when a contract consists of a number of terms and conditions each condition does not form separate contract. The contract has to be read as a whole as laid down by the Hon'ble Supreme Court in the case of *Chaturbuj vallabhdas* AIR 1954(SC) 236.

9.1. A careful perusal of the various clauses of the contract in the light of the provisions of Sec. 44BB which reads as under:

> ***"44BB.*** *(1) Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A, in the case of an assessee 83[, being a non-resident,] engaged in the business of providing services or facilities* ***in connection with****, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils, a sum equal to ten per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession":*
>
> ***Provided*** *that this sub-section shall not apply in a case where the provisions of section 42 or section 44D or section 115A or section 293A apply for the purposes of computing profits or gains or any other income referred to in those sections.*

(2) The amounts referred to in sub-section (1) shall be the following, namely:–

(a) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and

(b) the amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.

[(3) Notwithstanding anything contained in sub-section (1), an assessee may claim lower profits and gains than the profits and gains specified in that sub-section, if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB, and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee under subsection (3) of section 143 and determine the sum payable by, or refundable to, the assessee.]

Explanation.—For the purposes of this section,–

(i) "plant" includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purposes of the said business;

(ii) "mineral oil" includes petroleum and natural gas.]

It clearly shows that the assessee is engaged in the business of providing services or facilities **in connection with** its business, therefore, provisions of Sec. 44BB clearly apply on the facts of the case. The AO has grossly erred in considering part of the income of the assessee as fee for technical services without pointing out which part relates to FTS. The Ld. CIT(A) has rightly considered the entire income to be taxed u/s. 44BB of the Act.

10. A careful perusal of the various decisions relied upon by the assessee shows that the work/services done by the assessee do not come within the purview of Sec. 9(1)(vii) of the Act. Respectfully following the decisions of the Tribunal, we do not find any reason to interfere with the findings of the Ld. CIT(A). Order of the Ld. CIT(A) is confirmed. Ground No. 1 & 2 are accordingly dismissed.

11. Ground No. 3 relates to the charge of interest u/s. 234B of the Act. Though the levy of interest is mandatory but in the instant case, since the income of the assessee was liable for deduction of tax at source u/s. 195 of the Act, decision of the Hon'ble Jurisdictional High Court in 313 ITR 187 would apply. The Ld. DR strongly placed reliance on the decision of the Delhi High Court in the case of *DIT-1, International Taxation vs Alcatel Lucent USA, INC* wherein the Hon'ble High Court has clearly held that assessee would be liable for paying interest u/s. 234B of the Act. However, since we are governed by the Jurisdictional High Court decision, we do not find any reason to interfere with the findings of the Ld. CIT(A). Needless to mention in the instant case the levy of interest would be , in any case , consequential . Ground No. 3 is accordingly dismissed.

ITA No. 701/M/09

12. The Revenue has raised following grounds of appeal:

> *"1. On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in directing the assessing officer to assess the total receipts of Rs. 1,30,43,214/- under section 44BB of the IT Act, 1961 holding that the sub-contract agreement (with L & T for offshore installation work under consideration) is being a composite one and the income of the assessee is taxable under section 44BB of the Act.*
>
> *2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the assessing officer the receipts of Rs. 32,91,361/- treated as" Fees for Technical Services" be included as part of total consideration of sub-contract receipt and to be assessed as per the provisions of section 44BB of the Act.*
>
> *3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that since the entire income of the assessee was liable for deduction of tax at source under section 195 of the Act, no advance-tax was payable and consequently, interest under section 234B could not be changed."*

13. Identical grievances of the Revenue have been considered by us in the case of Valentine Maritime (GULF)LLC (VMGL) in ITA No. 700/M/09 for assessment year 2005-06. As facts and issues involved in this appeal are identical with the facts and issues considered by us in the case of Valentine Maritime (GULF)LLC (VMGL) in ITA No. 700/M/09, following our own finding in the aforesaid case, the appeal of the Revenue is dismissed.

14. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 27th November, 2013
