

Tax Review/Taxation

Daily Alert Services

Huzaima & Ikram

October 07, 2013

This special email service from Monday to Friday, part of subscription package, is aimed at keeping you informed about tax and fiscal matters. It contains news, legislative changes, case-law, in-depth articles and analyses covering all areas of taxes at domestic and international level. On every Saturday evening, we email weekly compilation of the entire material. Every month, *Taxation* in printed form, is sent through post and digital version of *Tax Review International* is made available for download at www.huzaimaikram.com.

For subscription, please visit our [website](#) or contact offices mentioned below.

This service is available only for paid subscribers. If you are a subscriber of *Law and Practice of Income Tax (LPIT)*, *Law and Practice of Sales Tax (LPST)*, *Taxation* or *Tax Review International* but not receiving this service, please send your email address at sales@huzaimaikram.com quoting subscription number.

Disclaimer:

The material contained in this publication is not intended to be advice on any particular matter. No subscriber or other reader should act on the basis of any matter contained in this publication without seeking appropriate professional advice. The publisher, the authors and editors, expressly disclaim all and any liability to any person, whether a purchaser of this publication or not, in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance upon the contents of this publication.

This issue contains:

- **ARTICLE**

Is Stake Money Received by Jockeys Liable for TDS?

- **TAX NEWS**

SRO 896(I)/2013:

two percent extra ST imposed on import of items

Discrepancies in data: CREST recovers over Rs 700 million from refund claimants in first quarter

Sales Tax Special Procedure Rules 2007: expert says amendments 'hazardous' for local industries

Purchasing apartments in Dubai:

FBR's bid to collect buyers' information

- **CASE LAW**

FOREIGN

Commissioner of Income Tax

v.

M/s. Reliance Energy Ltd.

- **MISCELLANEOUS**

Comments on Amendments in Sales Tax Regime vide SROs 895(I)/2013, 896(I)/2013, 897(I)/2013, and 898(I)/2013

Kind regards

Mrs. Huzaima Bukhari

Editor

Lahore

Suite No. 14, Second Floor,
Sadiq Plaza, Regal Chowk, Mall Road,
Lahore 54000 Pakistan
Ph. (+9242) 36280015 & 36365582

Karachi

Ms. Sadaf Bukhari
Cell: 0301-8458701

Is Stake Money Received By Jockeys Liable For TDS?

by
CA Ashish Karundia*

In a short but succinct article, the author has dealt with the controversial topic whether stake money received by jockeys is liable for TDS or not. After thorough research and a systematic study of sections 194BB and 194J of the Act, the author has drawn the conclusion that there is no present obligation to deduct tax on these payments.

Casual and non recurring receipts were exempted from payment of Indian Income Tax since 1918 [end note 1] except where such receipts arose from business or exercise of profession, vocation or occupation. The Indian Courts have held that winnings from horse races amount to casual and non recurring income, however, whether such income qualifies as business income of the taxpayer or not is a question of fact [end note 2]. Resultantly, winnings from horse races were brought to tax where horse racing constituted a business of the taxpayer else exempted where the same constituted hobby. In order to bring uniformity in taxing such winnings, the legislature amended [end note 3] the Income Tax Act, 1961 ('ITA') and deemed, winnings from horse races, as income [end note 4] on the basis of the suggestions [end note 5] of various committees [end note 6].

After bringing winnings from horse races within the tax net, the legislature inserted section 194BB [end note 7] which provided for tax deduction at source ('TDS') on payment of winnings from horse race. Winnings from horse races within its ambit encompass income by way of betting, income by way of stake money (prize money) [end note 8].

Income by way of stake money is paid by the race clubs to horse owners, racehorse trainers and jockeys as per the rules made by Turf Authorities of the Race Clubs. A circular issued by Central Board of Direct Taxes ('CBDT') explaining the scope of section 194BB *specifically provided for non deduction of tax on payment of stake money* [end note 9].

In spite of the clarifications from CBDT, the question of applicability of TDS on stake money is not yet settled. *The scope of this article is limited to analysis of applicability of TDS on stake money paid to jockeys.*

Jockey is a person who rides a horse especially as a professional in a race for which he receives ridership fees from the horse owners [end note 10]. Apart from ridership fees, jockey also receives share of stake money from the race clubs in case jockey secures the prized position [end note 11].

Section 194J of the ITA provides for deduction of tax at the rate of 10% on payment of any sum by way of fees for professional services to a resident. Explanation (a) to section 194J defines 'professional services' as services

* Senior Associate, Direct Tax, Lakshmikumaran & Sridharan.
2013

rendered by a person in the course of profession including services as a sports person [end note 12].

It is, therefore, evident that deduction under section 194J is attracted only when any specified service is rendered to any person for a consideration.

Facts of a particular case may suggest that the jockey receives share of stake money from race clubs by securing prized position in the horse race and not because of rendering any professional services to the race clubs or to racehorse owner.

Revenue authorities, however, relying on circular [end note 13] wherein it is said that there is no stipulation that professional services must be rendered to the person making payment for invoking section 194J may contend that even though no professional services are rendered to the race club, still TDS under section 194J will be attracted. In this regard, reference is made to the decision of Hon'ble Delhi High Court in the case of Vipul Medcorp TPA (P.) Ltd. [end note 14] wherein it was held that even though it is not necessary to render professional services to the payer nevertheless specified professional services must be rendered in respect of which payment is received to attract TDS under section 194J.

Thus, a view emerges that to attract section 194J, nature and character of payment in the hands of the recipient is relevant i.e. the amount should be received by the payee as a fee for rendering professional services.

In a given set of facts, it may be possible to contend that the share of stake money received by jockeys from the race clubs is not in the nature of fees for professional services i.e. towards rendering of any professional services either to race clubs or horse owners but received as prize money for securing the prized position.

In light of the above discussion, a view emerges that tax may not be required to be deducted on share of stake money paid by race clubs to jockeys either under section 194BB or section 194J.

Analysis of TDS implications on the payment of stake money to horse owners is also under process by the Author though having a prima facie view that such payments should not attract TDS. A detailed discussion on this issue will follow shortly.

1. Refer section 3 (2) (viii) of The Indian Income Tax Act, 1918.
2. Janab A. Syed Jalal Sahib v. CIT [1960] 39 ITR 660 (Madras High Court), Lala Indra Sen [1940] 8 ITR 187 (Allahabad High Court – Full Bench).
3. Vide Finance Act, 1972.
4. Refer section 2 (24) (ix) of Income Tax Act, 1961
5. To bring horizontal and vertical equity.
6. John Mathai Report 1953-54, Nicholas Kaldor Report 1956, K.N.Wanchoo Report, 1971.

7. Vide Finance Act, 1978.
 8. As understood in common parlance.
 9. Circular No. 240 dated 17th May, 1978.
 10. As understood in common parlance.
 11. As per the rules made by Turf Authorities of the Race Clubs – Refer R.W.I.T.C Ltd. – Rules of Racing, 2012.
 12. Section 44AA read with Notification No. 88/2008 [S.O. 2085(E)] dated 21st August, 2008 whereby interalia sports person is specifically notified as ‘professionals’.
 13. Circular No. 8/2009 dated 24th November, 2009.
 14. [2011] 245 CTR 125 (Delhi HC).
-

SRO 896(I)/2013: two percent extra ST imposed on import of items

The two percent extra sales tax has also become applicable on the import of items, which were recently excluded from Third Schedule of the Sales Tax Act under SRO 896(I)/2013. Explaining the rationale behind recently issued notifications by the Federal Board of Revenue, a renowned sales tax expert of Karachi Arshad Shehzad told this scribe that the through SRO 896(I)/2013, the FBR has omitted certain items from the Third Schedule of the Sales Tax Act, 1990, and in lieu imposed a two percent additional tax on these items to be paid by manufacturers.

The rate of two percent was also worked out on the basis of actual value addition of these sectors from the manufacturers till retail stage.

Technically after exclusion of items from 3rd schedule tax would be calculated on ex-factory price instead of retail price and normally there is at least 15 percent gape between retail or ex-factory price hence applying 17 percent sales impact the measure roughly give benefit around @ 2.55 percent at the other end extra levy was imposed @ 2 percent hence still tax payer would get some relief even after applying extra tax, further tax payer would no more require to follow complex procedure for printing and observing retail price on each of their items. Here it is important to note that now extra tax is also put on imported items whereas 3rd schedule was not applicable on imported goods hence disparity between local product and imported goods were also settled at the one end and tax impact was enhanced on imported goods at the other end. The FBR however did not exclude application of further tax and sales tax withholding on items levied with extra tax was the measure required to be take up as per agreed principle and to achieve entire satisfaction of the business community are the reason behind negative reaction on this particular account by business community, he said.

Commenting on reaction of business community, Arahad Shehzad said that FBR had recently issued four sales tax notifications to accept demands of trade and industry after intervention of finance ministry.

In the Finance Act 2013 some of the measures take up by the government were criticised by trade bodies all over in Pakistan, it was the general impression that existing narrow based of the country was further squeezed by these measures, stake holders

were not taken on board and thus at least procedural measure where no significant impact on revenue be at least reviewed to boost the confidence of taxpayers community. The issues were remain under debate for over three months and finally Finance Minister met the business leadership of Karachi and assured all their proposals would be accepted, accordingly FBR has issued notifications 895 to 898 last week.

In this back ground after issuance of notifications by the FBR to fulfil the demands of business community, reaction from business community was quite surprising and it is observed that FBR seemed to be failed to win confidence of the business community, therefore to understand the implication of this notification in nitty-gritty, renowned sales tax expert and advisor of the business community in Karachi were asked to explain each notification separately.

Regarding levy of extra tax @ 2 percent in lieu of items excluded from third schedule, Shehzad informed that inclusion of items in third schedule was highly criticised in this finance bill, it was considered as a major step deviating from V A T based regime to a single stage tax levy, though it could generate additional revenue this year however burden of tax collection has to be beard by single person, further the potential unregistered supply chain would remain escaped from tax net. The FBR accepting this demand has removed recently included items from third schedule and levy 2% extra tax in term of special procedure. Technically after exclusion of items from 3rd schedule tax would be calculated on ex-factory price instead of retail price and normally there is at least 15 percent gape between retail or ex-factory price hence applying 17 percent sales impact the measure roughly give benefit around @ 2.55 percent at the other end extra levy was imposed @ 2 percent hence still tax payer would get some relief even after applying extra tax, further tax payer would no more require to follow complex procedure for printing and observing retail price on each of their items.

Regarding amendment in sales tax withholding procedures, Shehzad explained rate of sales tax withholding on distributors and wholesalers are reduced to the extent of 50 percent on existing rates and now withholding is required @ 1/10th, likewise commercial importers are excluded from sales tax withholding if the value addition tax was already been paid at import stage both these steps are taxpayers friendly having positive impacts,

required to be taken earlier, the delayed measure after filing civil petitions by taxpayers who granted stay orders from competent courts reflects policy makers sluggish approach in responding and resolving genuine issues.

Application of 17 percent sales tax on purchases made from unregistered person without allowing input tax was one of the key issue raised under budget anomalies. The measure was tantamount to double taxation by imposing tax on both purchase and sales stage. In recent amendments rate of sales tax on purchases made from unregistered person was reduced to the extent of 1 percent the trade has got some sort of relief. However, it still raise eyebrow of persons having more sound understanding, apparently reduction of rate say from 17 percent to 1 percent may be portrayed as a big relief but in thread bear examination it's not like that. Sales Tax is chargeable on sales and it is very simple that sales include entire cost of purchase, which means even if someone portion of purchase remain untaxed on purchases from unregistered person, at the time of sales the registered person is required to pay sales tax on sales value hence sales tax applied on it includes impact of sales tax to the extent of unregistered person hence paying even an adjustable tax @ 1 percent on unregistered purchases is in addition to the tax supplier is constitutionally liable to pay on sales. The policy makers also cannot reply that exporters being zero rated section under fourth schedule of the S T Act, 1990 would liable to bear burden of tax which could not be refundable to them, therefore technically the segment would not be termed 100 percent zero rate or sales tax free, sales tax expert said.

Amendment in sales tax rate of finished fabric form 5 percent to 3 percent in recently issued notifications though taken to meet the demands of business community but its adverse implication for treatment of sales tax from two percent to 3 percent on raw fabric or fabric used as industrial input for manufacturing of finished goods is one of the issue not properly been take care off.

Hence considering all the said measures in detail it seems that even positive steps of finance ministry were not worked out properly intentionally or unintentionally and thus failed to win confidence of the business community, Shehzad concluded. In his opinion the policy makers are required to regularly sit with trade bodies and open heartedly listen their proposal is the only way out

not to only win their confidence but to achieve sustainable business growth, he added. – *Courtesy Business Recorder*

Discrepancies in data: CREST recovers over Rs 700 million from refund claimants in first quarter

The Computerised Risk-Based Evaluation of Sales Tax (CREST) of Federal Board of Revenue (FBR) has recovered an amount of over Rs 700 million from refund claimants having discrepancies in their data during first quarter (July-September) 2013-14 and rejected 35 percent of refund claims cleared by the Expeditious Refund System (ERS).

Sources told here on Sunday that the CREST, recent software developed by Board, has started monitoring the performance of its field offices. It is a computer system which detects discrepancies in the sales tax returns and refund claims on the basis of available information. The refund claims have been processed through the CREST for detection of discrepancies in the claims, if any. The registered sales taxpayers have been allowed to electronically respond to their sales tax discrepancies detected through the CREST. The tax officials have been specifically assigned to use the system and respond to the queries and replies of the registered persons through the system. The users of the system who are non-compliant have been identified by the CREST.

The CREST system is now reporting the non-responsive tax officials and reporting their activities. These officials were assigned to analyse data and take action on the response of the taxpayers with the help of the system. The FBR has now identified tax officials, who have not taken action on the replies of the taxpayers responding to queries raised by the CREST. The system is displaying 'black blinking' on the computer screens in cases where the concerned tax officers are not responding to taxpayers replies, required under the law.

It is learnt that the system maintains log of the activities or tasks performed by different official users. It provides, on a click, the activities or tasks performed from Assistant Commissioner to Chief Commissioner. Interesting to find its unique feature is that it starts blinking where any action or task required to be performed is pending. Such transparent monitoring have yielded results as officers who were previously averse to use of IT are now generally found logged in during their office time on daily basis. Another feature that has helped in its upgradation is that it

provides the facility to the official user to register any issue, point out any flaw in the system or make suggestion to the system to look into such responses and take necessary measure where these are required.

According to the official, the system has selected Akbar A. Khan an Audit Officer from Regional Tax Office Rawalpindi as one of the best users who constantly look into discrepancies relating to his area of jurisdiction and, also, provide consistent feedback. The system is currently showing his picture as best user. The criteria for the selection of the best officers is in built. The factors that contribute for selections are contribution of officers in tax collection, detection of tax cyber crime, streamlining of the procedure and lastly measure for the facilitation of the taxpayer. On a scale of one to ten, six points are assigned and one mark is assigned each to other factors. In RTO Lahore where CREST is stationed has selected Ms. Bela Tariq, Deputy Commissioner as high user and Muhammad Nadeem Arif, Commissioner as officer of the first quarter for providing leadership in the RTO. Tax analysts believe that it will provide healthy, competitive spirits amongst different users and will make the system more incisive and spot-on for maximisation of revenue yields, they added. –
Courtesy Business Recorder

Sales Tax Special Procedure Rules 2007: expert says amendments 'hazardous' for local industries

Amendments made by the federal government to Sales Tax Special Procedure Rules 2007 appear to be hazardous for local industries, a tax expert said. According to Adnan Mufti FCA, Partner, Shekha & Mufti - Chartered Accountants, the government levied two percent extra tax on certain goods including auto parts with no input adjustment.

He said that the restriction on input adjustment of extra tax would create adverse impact on local industries especially automobile, as industry was not liable to claim input, despite paying two percent extra tax to the vendors.

Resultantly, the local industries affected by these amendments will be unable to maintain product price and compete in local markets.

He said that after the amendments to Sales Tax Special Procedure Rules 2007, sales tax at the rate of 17 percent along with extra tax

@ 2 percent (total 19 percent) would be computed and payable @ value of supply (ex factory price) only when such goods were supplied by importers or manufacturers. However, such goods were earlier taxed at 17 percent of retail price.

If extra tax @ 2 percent is paid by importer/manufacturer, the specified goods will not be exposed to sales tax at any subsequent stage(s).

Mufti was of the view that delisting of large numbers of goods from 3rd Schedule of the Act and putting extra tax thereon @ 2 per cent would not accrue any additional revenue to the government. Therefore, the marginal revenue impact of the change is expected to be negative for the government.

Moreover, he said that all notified goods would be exempted from sales tax at subsequent sale stages which would negate the government's policy of documentation and expansion of tax base to distributors, wholesalers and retailers. This may also result in under valuation at the hands of importers and manufacturers.

The rate of withholding tax on taxable purchases made from unregistered persons by withholding tax agents like companies, recipients of advertisements services and registered exporters has been reduced from 17 percent to 1 percent of the value of taxable purchases.

He said that numerous writ petitions were filed against such levy and stay orders were issued by the courts in the favour of tax payers. Therefore, this amendment is expected to curb such litigation, besides bringing down cost of doing business for the registered sector.

In order to remove doubts, it has been specifically clarified that the amount withheld @ 1 percent will not constitute input tax for the withholding agent and shall be paid to the government without any adjustment.

He termed the amendments to Third Schedule as illogical; saying that the Third Schedule items were taxed at retail price hence there was no need to put an extra burden on the respective manufacturers in the shape of withholding tax.

Commercial importers had also been exempted from withholding tax since they were not allowed to claim any refund under Chapter IX of Sales Tax Special Procedure Rules 2007.

However, the amendment appears to be subjective in nature as the buyer procuring goods from commercial importers may not

determine whether the importer has paid value addition tax at import stage. Consequently, there may be lack of compliance of WHT rules due to incorrect presumptions or understanding.

Cottage industry and small retailers enjoying specific exemptions under Serial No. 3 of Table 2 of the 6th Schedule of the Act are expected to be badly hit by the new amendments as withholding tax agents would treat them as unregistered, irrespective of the fact that such suppliers are not liable to be registered under the Act.

The Federal Government has again amended SRO 1125(I)/2013 dated 31 December 2011 with respect to import and sales of fabric. Now, import and supply of all kinds of fabric shall attract sales tax @ 3 percent and value addition tax @ 2 percent on commercial import of fabric.

Previously, supply of fabric useable as industrial input to the person of five sectors was subject to sales tax @ 2 percent in terms of Clause (vi) of SRO 1125.

However, the same was subject to debate among certain quarters of textile sector with respect to classification of fabric either as “industrial raw material” or “finished goods”. Through the recent amendment, blanket rate of sales tax @ 3 percent on import and supply of fabric has been notified with value addition tax @ 2 percent on import stage. Consequently, the rate of sales tax on purchase of fabric as industrial input has been increased from 2 percent to 3 percent which may adversely affect the textile sector.

The restriction placed vide SRO 221(I)/2013 dated 19 March 2013 on refund of input sales tax against local supplies has now been reviewed and abolished.

However, refund against local supplies has now been made admissible only if value addition on local supplies is not less than 10 percent. The refund filers are also required to undergo pre-refund audit for the processing of refund under the said SRO besides furnishing revolving bank guarantee of the amount equivalent to average monthly refund claimed by them. After the sanction of refund claims, post refund audit will also be conducted by the concerned tax office.

He said that aforesaid requirements and pre-conditions set out by the Federal Government appear to be quite complex and involve substantial cost of documentation. – *Courtesy Business Recorder*

Purchasing apartments in Dubai: FBR's bid to collect buyers' information

The Federal Board of Revenue (FBR) has made an attempt to collect particulars of Pakistanis, who have shown interest in buying properties and luxurious apartments in Dubai, as recently seminars were organised in Karachi and Lahore by international marketing companies to lure the local investors.

It has been reliably learnt here on Sunday that foreign property companies from Dubai held seminars in Karachi and Lahore on September 28-29, 2013 to attract locals for booking of luxury apartments in Dubai. The prices of such luxury apartments starts from Rs 15 million and prices go up manifold for apartments in high-rise towers and apartments built by branded ventures of global repute etc.

Tax authorities showed strong apprehensions that this is a move for flight of capital from Pakistan in the form of investment in properties in Dubai. The FBR took notice of the advertisements and decided to send their team of tax officials at these seminars at Karachi and Lahore to collect information about the visitors who wanted to purchase apartments in Dubai. Sources said that the FBR has not given any written instructions to the field formations in Karachi and Lahore for collection of data at these seminars. However, it was decided at the Board's level to check particulars of keen buyers and verbal instructions were communicated to the relevant field formations in Karachi and Lahore to visit the seminars organised in hotels.

Certain tax officers and officials visited these seminars in the form of a team at the designated hotels located in Karachi and Lahore. Primarily, tax officers watched the kind of people who have shown interest in the seminars. They observed the visitors and also tried to collect data about such visitors, who were interested in purchasing property in Dubai. It was a sort of advertisement and awareness campaign rather booking of apartments or advance payments. The visitors collected brochures and inquired about different kinds of real estate investments in Dubai.

According to sources, it was found that the seminars were mainly a kind of publicity campaign, but no purchase/booking of apartments took place.

Reportedly, the concerned tax officials informed the Board that no bookings or advance payments were made in the seminars as communicated by the organisers to these officers. The tax officials

also approached the organisers to collect information with the argument that the tax department has legal authority to collect information about the interested persons who have given their phone numbers and addresses to the investors.

The organisers assured the tax officials that they would provide the requisite information during their next visit to Pakistan in November 2013. The organisers further reportedly informed the tax officials that the information of investor is available in their main offices in Dubai. Tax officials also made an attempt to obtain the information by referring to the tax laws in Pakistan, but the organisers insisted to provide the data during their next visit. As the tax officials have no first hand information about the persons who just visited seminars for awareness, the FBR is not pursuing the exercise in the absence of the relevant data, sources said. – *Courtesy Business Recorder*

2013 TRI 1673 (S.C. Ind.)

SUPREME COURT OF INDIA

R.M. Lodha and Shiva Kirti Singh, JJ.

Commissioner of Income Tax

v.

M/s. Reliance Energy Ltd.

FACTS/HELD

Section 234D does not apply to an assessment year commencing pre 1.6.2003 if the assessment order is passed prior to that date

1. For AY 1998-99, the AO passed an assessment order prior to 01.06.2003 in which interest u/s 234D was not levied. The assessee filed an appeal against the said order on certain other issues and in giving effect to the order of the appellate authority, the AO levied interest u/s 234D on the ground that excess refund had been allowed u/s 143(1) than what the assessee was entitled to u/s 143(3). The Tribunal allowed the assessee's appeal by relying on Exta Promoters 305 ITR (AT) 1 where it was held that as s. 234D was inserted with effect from 1.6.2003, it did not apply to earlier assessment years. The department's appeal was dismissed by the High Court (order included) by relying on its own judgement in the case of Delta Airlines 245 CTR 16 (Bom) (order included). On appeal by the department to the Supreme Court HELD dismissing the appeal:

Explanation 2 to s. 234D makes it clear that the provisions of the section shall not apply to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed before the said date. As the assessment order in the present case was passed before 1.6.2003, the question of retrospectivity of s. 234D does not arise.

Special Leave Petition is dismissed.

Petition(s) for Special Leave to Appeal (Civil) No(s).14013/2013.

Decided on: 30th September, 2013.

Present at hearing: Arijit Prasad, D.L. Chidananda, Sahil Tagotra & Anil Katiyar, Advocates, for Petitioner. G.C. Srivastava, Preeti Bhardwaj, Mr. Aditya Parda & Shiv Kumar Suri, Advocates.

JUDGMENT

Heard learned counsel for the parties.

Learned counsel for the Revenue submits that the question involved in the present special leave petition is in respect of retrospectivity of Section 234D of the Income Tax Act, 1961 (for short, 'Act') and, therefore, the decision of the Bombay High Court in Director of Income Tax (International Taxation)-I Vs. M/s Delta Air Lines Inc. has no application and the High Court erred in dismissing the appeal preferred by the Revenue while keeping the question of retrospectivity of Section 234D open.

Learned counsel for the assessee places reliance on Explanation (2) inserted in Section 234D of the Act by the Finance Act, 2012 with effect from 01.06.2003.

Explanation (2) which has been inserted in Section 234D of the Act reads as under:-

“Explanation 2. - For the removal of doubts, it is hereby declared that the provisions of this section shall also apply to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date.”

The High Court was concerned with the appeal relating to the assessment year 1998-99. It is admitted case that the assessment of that year was completed prior to 01.06.2003.

Having regard to the legal position which has been clarified by the Parliament by insertion of Explanation (2) in Section 234D of the Act, in the present case, retrospectivity of Section 234D does not arise.

Having regard to above position, the view of the High Court in relying upon the decision of the Bombay High Court in M/s Delta Air Lines Inc. (supra) cannot be said to be erroneous.

Special Leave Petition is dismissed.

COMMENTS ON AMENDMENTS IN SALES TAX REGIME VIDE SROs 895(I)/2013, 896(I)/2013, 897(I)/2013, AND 898(I)/2013

Prologue:

FBR, in a volte - faced strategy, and after protracted negotiations with business fraternity, has made significant amendments in Sales Tax Regime.

To accommodate the demands of trade bodies, mostly inflicting losses to exchequer, FBR has promulgated SROs 895(I)/2013, 896(I)/2013, 897(I)/2013, 898(I)/2013, October 04, 2013;v to incorporate changes in following Statutes and/or Rules:

1. Sales Tax Act 1990 (“STA”),
2. Sales Tax Special Procedure Rules 2007 (“STSPR”),
3. Sales Tax Special Procedure (withholding) Rules (“STSPWR”), and
4. SRO 1125(I)/2011 (SRO - 1125), and

Causatum of these amendments are annotated below:

1. NOTIFICATION 895(I)/2013 AND SRO 896(I)/2013 STATUTE AMBIT STA (3RD SCHEDULE) AND STSPR (CLAUSE 58 - S)

Through Finance Act, 2013; (introduced through budgetary proposals), FBR enlisted following items in the 3rd Schedule of STA, which were subjected to printed sales price on packing including GST.

Through afore - referred amendments FBR has levied 2% Value Addition Tax (“VAT”) on the amount of supplies made by Manufacturers to Wholesalers, Distributors, Retailers. Previously, such ST was levied at each stage of supply i.e:

- From Manufacturers to Wholesaler and/or Distributor, and
- Distributor and/or Wholesaler to Retailer.

With the promulgation of afore - said SROs such stage - wise levy of ST has been eliminated.

VAT Rate on Electrical Appliances has been increased from 0.75% to 2%, which will increase the burden of tax on end - users.

Input adjustment, as applicable, are allowed to manufacturers:

ITEMS LISTED IN 3RD SCHEDULE OF STA:

Entry No.	Items	Present Status
22.	Finished or made up articles of textile and leather, including garment, footwear and bed ware, sold in retail packing	<i>Already Withdrawn</i>
23.	Household electrical good, including air conditioners, refrigerators, defreezers, televisions, recorders and players,	<i>Withdrawn by SRO 895(I)/2013</i>

	electric bulbs, tube lights, fans, electric iron, washing machines and telephone sets.	
24.	Household gas appliances including cooking range, province, geysers and gas heaters.	
25.	Foam or spring mattresses and other foam products for household use.	
26.	Auto parts and accessories sold in retail packing.	
27.	Lubricant oils, brake fluids, transmission fluids and other vehicular fluids and maintenance products in retail packing.	
28.	Tires and tubes.	
29.	Storage batteries	
30.	Arms and ammunition.	
31.	Paints, distempers, enamels, pigments, colours, varnishes, resins, dyes, glazes, thinners, blacks, cellulose, lacquers and polishes sold in retail packing.	
32.	Fertilizers.	<i>Still in force</i>
33.	Cement sold in retail packing.	<i>Still in force</i>
34.	Tiles sold in retail packing.	<i>Withdrawn by SRO 895(I)/2013</i>
35.	Biscuits, confectionary, chocolates, toffees and candies	<i>Withdrawn by SRO 895(I)/2013</i>
36.	Other goods and products sold in retail packing.	<i>Already Withdrawn</i>

It is worth mentioning that the items were subject to ST at 17% whereas, consequent to Promulgation of SROs 895 and 896, taxability will be as under:

ILLUSTRATION:

Price	Before SRO			After SRO		
	Cost	Rate	ST	Cost	Rate	ST
Supplies by Manufacturer	60	17	10.20	60	19	11.40
Wholesaler to Retailer (Differentiate in ST)	70	17	1.70			
Retailer to Consumer	70	17	1.70			
Total GST			13.60			11.4

In our opinion, if percentage of profit of total intermediaries i.e. distributors, wholesalers, and retailer is 11.76 (2/17 x 100), then

exchequer will not be denied of its due share of ST, whereas, in the case where intermediaries are making higher profit percentage, exchequer will be inflicted with losses and vice - versa.

2. SRO 897(I)/2013:

2.1 SALES TAX WITHHOLDING:

STATUTE/NOTIFICATION: STSPWT

REFERENCE: CLAUSE 2(A) ADDITION

Withholding Tax Rate of Registered Persons pursuing business as Wholesaler, Dealers (including petroleum dealers) or Distributors has been reduced from 20% of ST to 10% of ST.

2.2 SALES TAX WITHHOLDING RATE OF UNREGISTERED PERSONS (“URF”): REFERENCE: CLAUSE 3 (REPLACEMENT)

In a strategy shift, rate of withholding ST at 17% on suppliers by URF has been reduced to 1%. However, the tax so withheld will not be allowed as adjustment. Furthermore, condition of CNIC/NTN has been **withdrawn contrary to the policy of documentation of economy being propagated by the Government.**

2.3 EXCLUSION OF WITHHOLDING OF ST:

REFERENCE: RULE 5 IX & X (ADDITION)

Following categories of Goods have been exempted from ST Withholding Regime:

- Goods Specified in 3rd Schedule of STA, and
- Supplies made by importers, where value addition at the rate of 3%, has been paid at import stage under ST, under STSPR Chapter XI - 58B

3. SRO 898(I)/2013:

STATUTE/NOTIFICATION

REFERENCE: SRO 1125(I)/2011 - MODIFICATIONS

- FBR has reduced the rate of ST on import of Fabric to 3% besides VAT of 2%. Furthermore, FBR has also allowed refund against the local supplies, by imposing conditions of pre - audit of such claims and 90 days revolving bank guarantee.
- It is worth - scribing, previously Fabric, where used as industrial input i.e. rawmaterial, was charged at 2% ST, however, consequent to the issuance of SRO 898(I)/2013; it will be charged at 3% unless clarified. – *Courtesy Naveed Zafar Ashfaq Jaffery & Co. Chartered Accountant*