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This issue contains:

Kind regards

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Bilateral ST adjustment: FBR to ink MoU with provinces

Federal Board of Revenue (FBR) Chairman Tariq Bajwa on Monday said the FBR will sign a Memorandum of Understanding (MoU) with provinces for bilateral adjustment of the sales tax between federation and provinces. Tariq Bajwa informed the Senate Standing Committee on Finance that the FBR has agreed to the proposal of provinces for resolving the issue of input tax adjustment between FBR and provinces.

In this regard, the FBR had convened meetings with heads of provincial revenue boards/authorities. The FBR is in the process of drafting the MoU which would be shared with provinces for comments. It is expected that a formal MoU will be inked between the FBR and provinces during the current month. Under the proposed bilateral agreement, the FBR will be able to carry out bilateral adjustment of the sales tax between federation and each province. After every three months, ie, each quarter of fiscal year, the FBR will estimate that how much dues are pending with the federation or provinces on account of input tax adjustment. The FBR will reconcile the data with provinces after every three months for the said bilateral adjustment of input tax.

In principal, Punjab Revenue Authority (PRA) and Khyber Pakhtunkhawa Revenue Authority (KPRA) have agreed to the proposal of the bilateral input tax adjustment and they have shown their willingness to sign such bilateral agreement to resolve the issues of input tax adjustment, FBR Chairman said. The FBR Chairman said that before 2011 sales tax on services was collected by the FBR. Under the 18th Amendment and 7th NFC Award, provinces were empowered to collect sales tax on services. During the first year the FBR had collected sales tax on services on behalf of the provinces. The Sindh Revenue Board (SRB) was the first provincial revenue board which started collection of sales tax on services in 2011.

Later, PRA and KPRA have also started collecting sales tax on services. In Finance Act, 2013 amendment was made to the definition of provincial sales tax under which the FBR has disallowed input tax adjustment against provincial sales tax laws. The provinces claim sales tax adjustment on services and federation claims sales tax adjustment of goods. As a result of cross-adjustment of input tax, there are certain situations where the federation has to give refund on the behalf of provinces whereas provinces will do the same in case of federation. Last

year, the federation has paid sales tax refund amounting to Rs 9.5 billion to the provinces and provinces paid refund of Rs 4.5 billion to the federation. Therefore, the federation has paid Rs 5 billion more refund to the provinces. The federation and the provinces would be able to bilaterally adjust the amount of sales tax following signing of the MoU, he added. – *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 proprieties 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 pursing the exercise in the absence of the relevant data, sources said. – *Courtesy Business Recorder*

Smuggling negligible from Eastern border with India: FBR chief

Federal Board of Revenue (FBR) Chairman Tariq Bajwa on Monday said smuggling is negligible from Eastern border with India whereas illicit trade is mostly carried out through Western borders including Chaman border area due to law and order situation.

On the issue of smuggling, the FBR Chairman informed the Senate Standing Committee on Finance that most of the smuggling is taking place through the Western borders and the law and order situation is the main reason for smuggling. It is difficult for customs to operate near border areas with limited workforce. The FBR Chairman admitted that the smuggling is a major problem which is difficult to control in these circumstances.

Responding to a query on sales tax refund payments, the FBR Chairman said that the FBR has issued sales tax refunds to the

tune of Rs 20 billion during current fiscal year. The FBR has decided that the sales tax refund would be issued on first come first served basis under the new procedure of sales tax refund payment. He said the transparency has been ensured in the payment of sales tax refund. The claims shall be processed on first come first serve basis. For this purpose, the queue shall be maintained on the basis of the receipt of the refund claims. However, the claim lacking any document/information shall be checked by the system and next claim in line shall be processed. Blocked claim shall retain its position in the computer queue and be processed after documents/information is furnished, he added. Explaining the new audit strategy, Tariq Bajwa said that the tax department would issue system generated notices to the units selected for audit. Each electronic notice would contain specific bar-code for identification purposes. The electronic notices with the bar-codes would ensure transparency in audit. If any registered person receives notice without bar-code, the same should be ignored. Such manual notices which are not system generated are not genuine and taxpayers should not respond to them. The taxpayer audit management system (TAMS) generates system generated notices where manual intervention is not possible. About revenue collection position, the FBR Chairman said that during first three months of FY: 2013-14, Rs 481.5 billion have been collected against the target of Rs 509 billion. The figures for September 2013 are purely provisional and likely to increase further at the time of reconciliation with AGPR by mid-October 2013. The overall growth attained so far in the first quarter is 17 percent which is likely to increase when final figures are received, he added. – *Courtesy Business Recorder*

Materials used in bullet-proof vehicles' manufacturing: proposal under study to reduce duty, Senate body told

Chairman Federal Board of Revenue (FBR) Tariq Bajwa has said that the government is working on a proposal to reduce customs duty on the import of material used in the manufacturing of bullet-proof vehicles to encourage local production. FBR Chairman informed the Senate Standing Committee on Finance here on Monday that the board was holding consultations with the Ministry of Interior, Ministry of Commerce and Ministry of Industries for reduction in duty on the import of materials used in the bullet proof cars.

To a query on the import of expensive bullet-proof vehicles, Bajwa stated that the FBR had proposed reduction in customs duty on the import of such materials used in manufacturing of such vehicles and consultations with the said ministries including Ministry of Interior were underway.

About the amnesty scheme launched for legalisation of non-duty paid smuggled cars, FBR Member Customs Nisar Muhammad informed that the amnesty scheme had negative impacted the import of cars. "This year the import of vehicles is less, as compared to last year due to amnesty scheme and reduction in the age limit on import of old and used cars from five to three years," he informed.

To a question, Bajwa said that the FBR had filed an intra-court appeal with the Islamabad High Court against the decision of single bench against the amnesty scheme. "The FBR is trying to get stay order from the court," he added. To a question about launching new amnesty scheme, Tariq Bajwa clarified that the FBR had no intention to launch any such scheme. "Such kind of amnesty schemes weaken the rule of law and should be discouraged," he emphasised. – *Courtesy Business Recorder*

Higher slabs power consumers: FBR to launch 'targeted-survey' of markets

The Federal Board of Revenue (FBR) has decided to launch a 'targeted-survey' of markets after collecting data of commercial and industrial consumers of electricity from power distribution companies under the drive for documentation of economy.

While sharing plan to document 100,000 persons in 2013-14, FBR Chairman Tariq Bajwa informed the Senate Standing Committee on Finance that the FBR has asked the Discos to provide data of commercial and industrial consumers of electricity falling in higher tariff slabs to bring the big retail outlets and business establishments into the tax net. The FBR will first document commercial and industrial consumers of electricity who consumes more than expected power during manufacturing activities and become part of the higher tariff slabs. The commercial meters of electricity have different slabs on the basis of authorised load taking into account their production capacity. The FBR has asked the Lahore Electric Supply Company (Lesco) to provide data of first two categories of power consumers in the highest tariff slabs.

Similar kind of exercise would be conducted in co-ordination with other power distribution companies.

However, low power tariff consumers have been given least priority and focus is on the companies falling in higher tariff slabs. "We have shortlist commercial and industrial consumers of electricity and are in a position to start the targeted-survey to determine the actual sales of such power consumers," the FBR Chairman said. The FBR Chairman said that a meaningful exercise is being carried out for the broadening the tax base. The FBR is using the utility bills data which needs cleansing and would be instrumental in expanding the tax-base.

Tariq Bajwa said that FBR has taken certain steps to bring more businesses into tax net and have short listed details of those commercial power consumers who are in two top slabs. They will be given notice to pay tax, he added. FBR is committed to bring players, actors, singers and those who are paying Rs 16,500 monthly school fee in the tax net and gradually these people will file their tax returns. So far, 30,000 notices have been served to unregistered persons, he added. The FBR wanted to facilitate taxpayers in payment of their due taxes by simplification of procedures, he said. – *Courtesy Business Recorder*

Third Schedule: No new ST levied on household items: FBR chief

Federal Board of Revenue (FBR) Chairman Tariq Bajwa on Monday said the FBR has not imposed new sales tax on items such as household gas and electrical appliances as well as other goods, and it is out of question that the revised sales tax collection mechanism would add to the prices of these items.

On the conclusion of the Senate Standing Committee on Finance at the Parliament House, Tariq Bajwa told media that the revised sales tax collection procedure will have no impact on the prices of goods excluded from the Third Schedule of the Sales Tax Act, 1990. However, relief has been provided to the business and trade community in consultation with their representative bodies.

When asked that prices of some items have been reportedly increased, the FBR Chairman said the price control is not the domain of the FBR, but the recent revision of sales tax mechanism has nothing to do with price increase of these items. Taking into account the requests of the business community, the FBR has

excluded these items from the Third Schedule of the Sales Tax Act, 1990, and in lieu imposed 2 percent additional tax on these items to be paid by the manufacturers in consultation and after developing consensus with the trade bodies for provision of relief to the business community, he added. – *Courtesy Business Recorder*

Islamabad, the 3rd October, 2013

SECP CIRCULAR NO. 19/2013

Subject: **Appointment of Qualified Auditors**

The Securities and Exchange Commission of Pakistan (SECP) has noted instances were companies had appointed unqualified persons as their statutory auditors. The companies, in response to SECP's proceedings on the subject, invariably take the plea that such appointments were made as a result of misrepresentation on part of auditors.

The institute of Chartered Accountants of Pakistan (ICAP) has, through a letter from its Secretary, requested SECP to issue instructions to the companies/NBFIs and other organizations, which fall within its regulatory framework, to verify genuineness of the auditors at the time of appointment, from resources available at ICAP website's below mentioned link or by contacting ICAP Secretariat;

1. http://www.icap.org.pk/index.php/icap/downloads
2. Secretary
   The Institute of Chartered Accountants of Pakistan
   Chartered Accountants Avenue
   Clifton, Karachi.
   E-mail: membership@icap.org.pk
   Tel. No. 021-99251636-39

All companies are hereby directed to verify qualification of Chartered Accountants of firm of Chartered Accountants before making appointment of auditor.

It is emphasized that any appointment of auditors by companies without due verification will be considered a willful default making them liable for strict penal action under the provisions of Companies Ordinance, 1984. Moreover, unqualified persons acting as auditors or impersonating as Chartered Accountant and representing fake firms of Chartered Accountants are liable for civil and criminal liability under Companies Ordinance, 1984 and Chartered Accountants Ordinance, 1961.

2013 TRI 1675 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH, MUMBAI

R.K. Gupta, Judicial Member and Rajendra Singh, Accountant Member

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FACTS/HELD

TDS Credit must be given even if TDS Certificate is not available/ entry is not shown in Form 26AS

1. The assessee claimed credit for TDS which was denied by the AO on the ground that the claim did not match the entries shown in Form No. 26AS and that there was a discrepancy. On appeal, the CIT(A) held that the assessee would be entitiled to credit to the extent shown in the computer system of the department. On further appeal by the assessee to the Tribunal HELD:

> The AO is not justified in denying credit for TDS on the ground that the TDS is not reflected in the computer generated Form 26AS. In Yashpal Sahwney 293 ITR 539 the Bombay High Court has noted the difficulty faced by taxpayers in the matter of credit of TDS and held that even if the deductor had not issued a TDS certificate, still the claim of the assessee has to be considered on the basis of the evidence produced for deduction of tax at source. The Revenue is empowered to recover tax from the person responsible if he had not deducted tax at source or after deducting failed to deposit with Central Government. The Delhi High Court has in Court on Its Own Motion Vs. CIT 352 ITR 273 directed the department to ensure that credit is given to the assessee even where the deductor had failed to upload the correct details in Form 26AS on the basis of evidence produced before the department. Therefore, the department is required to give credit for TDS once valid TDS certificate had been produced or even where the deductor had not issued TDS certificates on the basis of evidence produced

by assessee regarding deduction of tax at source and on the basis of indemnity bond.

Appeal allowed.

ITA No. 8532/Mum/2011 (Assessment Year : 2007-08)

Heard on: 5th September, 2013.

Decided on: 13th September, 2013.

Present at hearing: A.V. Sonde, for Appellant. Deepak Kumar Sinha, for Respondent.

JUDGMENT

Per Rajendra Singh:– (Accountant Member)

This appeal by the assessee is directed against the order dated 6.9.2011 of CIT(A) for the assessment years 2007-08. The dispute raised by the assessee in this appeal is regarding credit of TDS and allowability of interest on interest u/s 244 of the Income Tax Act.

2. The facts in brief are that the assessee in the assessment year 2007-08 had claimed total TDS of Rs. 215163912. Claim of Rs. 1,65,20,93,44/-has been made in the original return and further claim of Rs. 14,271,296 had been made in the revised return filed on 13.4.2009. Thereafter during the assessment proceedings, the assessee had made further claim of Rs. 35,683,272/- vide letter dated 28.12.2010. The AO however gave the credit of TDS only to the tune of Rs. 118,960,393/-. The assessee disputed the matter in appeal and CIT(A), in the impugned order, directed the assessee to furnish all TDS certificate in original before the AO who was directed to verify the claim of credit of TDS and to allow TDS as per original challans available on record or as per details of such TDS available on computer system of the department. Aggrieved by the decision of CIT(A) the assessee is in appeal before Tribunal.

3. Before us the, learned AR for the assessee submitted that the AO was not allowing for the credit of TDS because of discrepancy with respect to credit shown in the form No. 26AS which is not correct. It was argued that the credit of TDS has to be given on the basis of TDS certificates and in case TDS certificates are not available, on the basis of details and evidence furnished by the assessee regarding deduction of tax at source. Reliance for the said proposition was placed on the judgment of Hon'ble High Court of Bombay in case of *Yashpal Sawhnev vs. ACIT* (293 ITR 539). Reference was also made to the recent judgment of Delhi High Court in case of *Court On Its Own Motion Vs. CIT* (352 ITR 273). In which the High Court directed the department to ensure that the credit is given to the assessee on the basis of details and evidences furnished, where the deductor does not upload the correct details in the form 26AS. The learned AR further pointed out that the new system of Form 26AS was applicable only from assessment year 2009-10 and was not applicable in case of the

assessee. Therefore, it was requested that the department may be directed to allow the credit of TDS on the basis of TDS certificate or indemnity bond and on the basis of credit shown in the form 26AS. The learned DR on the other hand placed reliance on the orders of authorities below.

4. We have perused the records and considered the matter carefully. The dispute is regarding credit for TDS. The credit of TDS has been denied to the assessee on the ground that the claim for TDS was no reflected in the computer generated form 26AS. The difficulty faced by the tax payer in the matter of credit of TDS had been considered by the Hon'ble High Court of Bombay in case of *Yashpal Sahwnev Vs. DCIT* (Supra) in which it was held that even if the deductor had not issued TDS certificate, the claim of the assessee has to be considered on the basis of evidence produced for deduction of tax at source as the revenue was empowered to recover the tax from the person responsible if he had not deducted tax at source or after deducting failed to deposit with Central Government. Hon'ble High Court of Delhi in case of *Court On Its Own Motion Vs. CIT* (Supra) have also directed the department to ensure that credit is given to the assessee, where deductor had failed to upload the correct details in Form 26AS on the basis of evidence produced before the department. Therefore, the department is required to give credit for TDS once valid TDS certificate had been produced or even where the deductor had not issued TDS certificates on the basis of evidence produced by assessee regarding deduction of tax at source and on the basis of indemnity bond. We, therefore modify the order passed by CIT(A) on this point and direct the AO to proceed in the manner discussed above to give the credit of tax deducted at source to the assessee.

5. The second dispute is regarding grant of interest on interest. It has been submitted by the learned AR for the assessee that the assessee was entitled for interest on the excess tax paid which had not been given to assessee and, therefore, from the due date of interest, further interest had to be allowed on the interest due. Reliance has been placed on the judgment of Hon'ble Supreme Court in case of *Sandvik Asia Ltd. Vs. CIT And Others* (280 ITR 643). The learned DR placed reliance on the orders of authorities below.

6. We have perused the records and considered matter carefully. The dispute is regarding grant of interest on delayed payment of interest. In case the assessee has paid excess advance tax or excess TDS, the assessee is liable for refund with interest and in case the interest is not granted on the due date, the assessee is liable for further interest on interest, in view of the Judgment of Hon'ble Supreme Court in case of *Sandvik Asia Ltd. Vs. CIT and others* (Supra). We, therefore, direct the AO to allow the assessee interest on interest if due as per law in the light of Judgment of Hon'ble Supreme Court in case of Sandvik Asia Ltd. (Supra).

7. In the result appeal of the assessee is allowed.

Order pronounced on 13 -9-2013

INCOME TAX APPELLATE TRIBUNAL
MUMBAI "K" BENCH, MUMBAI

R.S. Syal, Accountant Member and Vijay Pal Rao, Judicial Member

Stay application is allowed.

S.A.No.07/Mum/2013 (Arising out of ITA No.7786/Mum/2012 : Asst.Year 2008-2009).

Heard on: 1st February, 2013.

Decided on: 1st February, 2013.

Present at hearing: Nitesh Joshi, for Appellant. Dipak Kumar Sinha, for Respondent.

JUDGMENT

Per R.S. Syal:– (Accountant Member)

By means of the present stay application the assessee seeks to get the stay of outstanding demand amounting to Rs.18,87,67,930 for assessment year 2008-2009, till the final disposal of the appeal.

2. The facts of the present stay application indicate that originally this application was filed showing amounting of demand outstanding at Rs.18,87,67,930. The case came up for hearing on an earlier occasion. It was adjourned at the request of the assessee for the reason that the assessee had filed rectification application and stay applications before the authorities below, which were not disposed off till then. Today, the learned AR presented himself before the Tribunal by stating that the original order passed by the Assessing Officer has been now rectified on application of the assessee. A copy of the rectification application dated December 2012 has been placed on page 313 of the paper book. Apart from other issues, the assessee stated in this application filed before the A.O. that there were TDS certificates available with it to the tune of Rs.26.85 crore as against which credit of only Rs.18.28 crore was allowed against the due tax. The assessee requested for grant of credit in respect of the balance TDS certificate amounting to Rs.8.57 crore. The Assessing Officer passed order u/s 154, a copy of which is available on page 8 of the assessment order. After accepting the assessee's contention on certain other issues, he reduced the total amount of outstanding demand to Rs.7,55,06,298. A copy of Notice of demand dated 18.01.2013 showing this amount as outstanding, is available on pages 5 to 7 of the paper book. As regards the assessee's contention for allowing TDS for the remaining amount of TDS certificates, the A.O. mentioned in his order u/s 154 dated 18.01.2013 that : "With regards to TDS claim of the assessee, same is allowed as per matching available in the system". The net result of the rectification proceedings on the question of allowing credit against TDS

certificates is that no benefit for the remaining TDS certificates to the extent of Rs.Rs.8.57 crore has been allowed. The assessee appeared before the authorities below in connection with grant of stay. It was directed to deposit a sum of Rs.2.50 crore in three installments starting with Rs.50 lakh on 31.01.2013 and Rs.1 crore each on 20.02.2013 and 18.03.2013. The assessee has duly deposited a sum of Rs.50 lakh as per the direction of the Assessing Officer. A copy of challan dated 30.01.2013 is available on record. This shows that as against the revised demand of Rs.7.55 crore computed by the Assessing Officer pursuant to his rectification order u/s 154, a sum of Rs.50 lakh has already been paid. This leaves the demand outstanding at Rs.7.05 crore. The fact that the assessee has unadjusted TDS credit for the current year at Rs.8.57 crore as mentioned in its rectification application, has not been denied by the A.O. in his order. Merely because the Department's system does not indicate the said amount of TDS refund of Rs.8.57 crore, it cannot be held that the assessee should be compelled to deposit the amount once again. It is for the Department to check the error in its system or point out fallacy in the assessee's claim. There can be no question of penalizing the assessee for no fault committed by it. If the assessee's contention about the unallowed TDS credit of Rs.8.57 crore had been incorrect, the A.O. should have made a mention of this in his order u/s 154. Prima facie it appears that there is unadjusted TDS amount of Rs.8.57 crore against the current year's income. Since the remaining amount outstanding at Rs.7.05 crore is obviously less than the said amount of Rs.8.57 crore, in our considered opinion the assessee cannot be pressed to deposit a further sum of Rs. 2 crore as has been directed by the A.O. vide his order dated 23.01.2013. Considering the overall conspectus of the case, we grant stay of the remaining demand of Rs.7.05 crore till the disposal of appeal or for a period of 180 days from the date of this order, whichever is earlier. The Department is at liberty to adjust the outstanding demand by allowing credit as per TDS certificates for which no credit has been so far allowed to the assessee. The Registry is directed to fix the present appeal for hearing on out of turn basis on 3rd April, 2013. An announcement to this effect was made on the conclusion of the hearing. The assessee has waived the right to separate notice of hearing. It is made clear that the assessee shall not be entitled to take any adjournment without just case. If such an adjournment is sought, then this case shall be delisted from the priority list to be taken up in routine course.

3. In the result, all the stay application is allowed.

Order pronounced in the open Court on this **1st day of February, 2013**.
