Tax Review/Taxation

Daily Alert Service

Huzaima & Ikram
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This issue contains:

Kind Regards,

Huzaima Bukhari
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A state run on immorality

by
Huzaima Bukhari & Dr. Ikramul Haq

Since 1977, every government in Pakistan, civil and military alike, has miserably failed to tackle the issues of revenue leakages and illegal accumulation of wealth in a few hands. Every now and then schemes for whitening of black money and/or tax amnesties for evaders are announced to discourage the honest wage earners and taxpayers. Premier Nawaz Sharif on November 28, 2013 announced unprecedented concessions for the tax evaders and looters of national wealth in the garb of "good economic incentives" as he did in the shape of so-called Protection of Economics Reforms Act, 1992 (XII of 1992) that resulted in enormous flight of capital from Pakistan and dollarization of economy.

On December 10, 2013, Member Tax Policy and official spokesman of Federal Board of Revenue (FBR) clarified that "the reporting of the SDPI Seminar (held on 29-11-2013) in certain newspapers stating that he criticised economic package of the Prime Minister, is absolutely incorrect". He added that the "Package announced by PM fully incorporates the input from FBR and has the unequivocal support and ownership of the management of FBR, and that he sincerely believes that it will help kick start the industrialisation in the country"—http://www.brecorder.com/taxation/181:pakistan/1263063:clarification/?date=2013-12-11.

Pakistan is a unique case where the State instead of combating corruption sponsors and patronizes all kinds of undesirable practices as narrated by Premier on in his package announced on November 28, 2013 and now fully supported by official spokesman of FBR—**Nawaz Sharif & cronyism**, *Business Recorder*, December 6, 2013. Since General Zia'a era, this country is a victim of reverse capital flows and capital flights due to policies of appeasement by successive governments towards the corrupt and criminals. Every year, we receive about $12-14 as "remittances" (mostly own money recycled for whitening) but outflows are as high as $30 billion, if not more—**The Swiss accounts**, *Business Recorder,* September 9, 2013.

It is an undeniable fact that every year billions of dollars are sent abroad and then parts of this dirty money, hidden in tax havens, is legitimised using schemes provided by the State. It is widely believed that out of total remittances of US $14 billion received through normal banking channels during fiscal year 2012-13, about 40% was on account of "round-tripping". Additionally, not less than US $30 billion poured into the economy through informal channels during the same period. Many are of the view that these inflows are Pakistan's lifeline that keep things moving and help averting economic collapse.

Pakistan has a permanent money laundering and tax amnesty scheme in the form of section 111(4) of the Income Tax Ordinance, 2001 that facilitates the whitening of dirty money and tax evaded funds. It guarantees tax exemption for money brought into Pakistan through normal banking channels. Through this section, the tax evaders get undeclared money whitened by paying just an extra 1.5% to 2% to any money exchange dealer to get remittances fixed in their names. This section has been abused cleverly by Pakistani tax dodgers to launder their untaxed money through State patronage! In presence of this section, experts are of the view that neither the existing tax laws can be enforced nor any amnesty scheme can work.

Pakistan represents a classic case study of unchecked and unabated reverse capital outflows and illegal capital flight. The Pakistani economy lost billions of dollars to crime, corruption, and tax evasion since 1991 when many money whitening schemes and Protection of Economic Reforms Act 1992 were introduced by the then government of Nawaz Sharif to legitimize untaxed, undeclared money and assets in the name of so-called liberalization of economy (see details in our books, '*Pakistan: From Hash to Heroin'* and '*Pakistan: Drug-trap to Debt-trap'*).

The Protection of Economic Reforms Act, 1992 gives a free hand to tax cheats and money launderers to get billions whitened. Unfortunately, however, this law has never been examined by anybody from this perspective. All public office holders who have taken advantage of this law to avoid tax should have been disqualified for open admission of cheating the State. But not a single case has been filed till today and Election Commission of Pakistan at its own has never taken cognizance of it. It confirms how the rulers in this country engineer laws for self-aggrandizement. The losers are the poor and helpless of this Land of Pure, who are burdened with exorbitant indirect taxes and yet get nothing in return. The rich and mighty enjoy all luxuries of life at the expense of taxpayers whereas majority is living under the poverty line.

In these columns we have been persistently asking for a crackdown on underground economy, money laundering and revenue leakages. We never cited any known or hidden assets of Zardari or Sharifs and other politicians, quoted by various writers, as it is the job of the concerned authorities to get authentic information and evidence. Those at the helm of affairs in the Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), National Accountability Bureau (NAB) and FBR, should be taken to task for not investigating criminal flows and bringing on record all hidden assets. They have never bothered to employ modern intelligence apparatus to detect fiscal crimes, tax evasion and laundering of dirty money and seek information from other countries under the treaties. We suggest they should read a highly informative book, '*The Infiltrator'*, by Robert Mazur who, as an undercover agent in Internal Revenue Service (IRS), US Customs and Drug Enforcement Agency (DEA) successfully led one of the biggest money-laundering prosecutions in the US history. He not only demonstrated courage and dedication as an undercover agent but also valiantly resisted bureaucratic hurdles.

Rehman Malik, at a Press conference on 28th April 2012, while alleging that Nawaz Sharif and Shahbaz Sharif were involved "in a $32 million money laundering and bank default of Rs 6 billion" went on to say, "I want to ask you only one question: from where did you get $32 million?" This amount, he claimed, was paid by the Sharifs as settlement with a bank after a court's decision in London. In a strange and disgusting manner, the Interior Minister claimed that whatever he was presenting was his personal collection of proofs against the Sharif family. This was how, a responsible minister in Pakistan had talked about serious alleged crimes of corruption and money laundering. He was duty bound to take action against all acts of corruption and money laundering, but for him selective attack on opposition is the only priority. On the other hand, PML(N) while refuting all these allegations asked for the return of $60 million allegedly obtained by ex-President Zardari after the Swiss authority unfroze accounts on receiving a letter from the Attorney General. Now in power they are doing nothing about it.

Raymond Baker, Director of Global Financial Integrity, a research and advocacy organization in Washington, DC, and Director of the Task Force on Financial Integrity and Economic Development, an international private-public coalition of civil society groups and governments working on the issue of illicit financial flows, highlighted corruption of Zardari and Sharifs in his book "*Capitalism: Achilles Heels & Dirty Money & How to Renew the Free-Market System*" (http://85.17.122.144/bookreader.php/135381/Baker_-_Capitalism's_Achilles_heel.pdf) published in 2005 [page 77-85]. Zardari and Sharif who refute charges of stashing money abroad should answer the allegations comprehensively as he cited properties and accounts. For example, Mr. Baker specifically quoted a 1999 U.S. Senate report: "Mr. Schlegelmilch did not reveal to the Dubai banker that Mr. Zardari was the beneficial owner of the PIC [private investment company], and the account manager never asked him the identity of the beneficial owner of the account. . . . Shortly after opening the account in Dubai, Mr. Schlegelmilch signed a standard referral agreement with Citibank Switzerland private bank guaranteeing him 20 percent of the first three years of client net revenues earned by the bank from each client he referred to the private bank." In other words, Citibank was contracting to pay a finder's fee for millions brought in from dubious sources. Citibank went on to open three accounts in Switzerland for Zardari, with Schlegelmilch as the signatory. Rehman Malik should have obtained a copy of the Swiss Court's order against Mr. Schlegelmilch before making tall claims that "all was cooked up against his boss".

Pages 82-85 of Raymond Baker's book cover alleged corruption of Sharifs. It specifically mentioned that" one of the first things Sharif did upon becoming prime minister in 1990 was build his long-dreamed-of superhighway from there to the capital, Islamabad. Estimated to cost 8.5

billion rupees, the project went through two biddings. Daewoo of Korea, strengthening its proposals with midnight meetings, was the highest bidder both times, so obviously it won the contract and delivered the job at well over 20 billion rupees. A new highway needs new cars. Sharif authorized importation of 50,000 vehicles duty free, reportedly costing the government $700 million in lost customs duties. Banks were forced to make loans for vehicle purchases to would-be taxi cab drivers upon receipt of a 10 percent deposit. Borrowers got their "Nawaz Sharif cabs," and some 60 percent of them promptly defaulted. This left the banks with $500 million or so in unpaid loans. Vehicle dealers reportedly made a killing and expressed their appreciation in expected ways. Under Sharif, unpaid bank loans and massive tax evasion remained the favorite ways to get rich. Upon his loss of power the usurping government published a list of 322 of the largest loan defaulters, representing almost $3 billion out of $4 billion owed to banks. Sharif and his family were tagged for $60 million. The Ittefaq Group went bankrupt in 1993 when Sharif lost his premiership the first time. By then only three units in the group were operational, and loan defaults of the remaining companies totaled some 5.7 billion rupees, more than $100 million. Several offshore companies have been linked to Sharif, three in the British Virgin Islands by the names of Nescoll, Nielson, and Shamrock and another in the Channel Islands known as Chandron Jersey Pvt. Ltd. Some of these entities allegedly were used to facilitate purchase of four rather grand flats on Park Lane in London, at various times occupied by Sharif family members. Reportedly, payment transfers were made to Banque Paribas en Suisse, which then instructed Sharif 's offshore companies Nescoll and Nielson to purchase the four luxury suites".

Corruption in Pakistan is all pervasive. The *ashrafiya* (elite)—indomitable military-civil bureaucracy, corrupt politicians and unscrupulous businessmen—keep on singing the mantra of "patriotism" (sic) but indulge with impunity in rent-seeking, power politics, plundering of national wealth and organized crime. They consider it as their inherent right to deprive the poor of their fundamental rights. A lack of accountability and unprecedented tolerance towards corruption has made Pakistan a State controlled and run by ruthless forces representing money power. The following report is an eye-opener for all—http://www.thenews.com.pk/article-116604-Karachis-black-economy-generates-Rs830-million-every-day.

- Karachi's black economy generates a staggering Rs. 830 million every day.
- At least Rs.10 million is paid in extortion on a daily basis, while kidnapping for ransom amounts to Rs.50 million.
- Every day the parking mafia, which operates over 500 lots in the city, hooks Rs.2.4 million. There are over 55,000 hawkers operating stalls/kiosks in the city, who pay Rs.8.25 million to blackmailers every day.

- The water mafia sells approximately 272 million gallons of water illegally each day, which amounts to Rs.100 million.
- The city also houses 15,000 drug-selling and gambling dens, which make Rs.150 million per day.
- Karachi's land-mafia illegally grabs over 30,000 acres of government land denting the national exchequer by Rs.7 billion annually and Rs.230 million daily.
- The city's transport mafia extorts Rs.10.48 million from buses, rickshaws, and taxis. Illegal payments called "Dhakka Wasooli" received from trucks, container-trucks, and oil tankers earn the mafia an additional Rs.7.5 million.
- Electricity worth Rs.10.5 million is stolen daily in the city and there are between 4,000 to 5,000 'kundas' (illegal connections) in Karachi.
- Criminals associated with the health industry deprive the poor patients of Rs.3 million every day.
- Vehicle theft in the city is also at an all-time high, with an average of 40-50 motorcycles and 20-25 cars are lifted daily. This translates into Rs.20.5 million a day.
- Street criminals loot around 125-150 mobile phones, cash, jewelry and other valuables worth Rs. 5.2 million daily.
- Short-term kidnapping in which the abductees are held at gunpoint and driven around the city for several hours generates over Rs.3 million. Approximately 10-15 such kidnappings are reported from city's posh localities every day.
- The police in Karachi also receive bribes worth Rs210 million on a daily basis, which go into the pockets of officers from top to bottom.

Unfortunately, Pakistan has become a place where rampant and institutionalized corruption has become a way of life. Money from whatever source it comes, is the catchphrase in our society: aid money, drug money, foreign money, American money in exchange for fighting war against terrorism (sic), and 'black' money (which can be 'whitened' by mere 'remittance' through normal banking channels or investing in stock exchanges!). What makes the situation worse is the fact that State sponsors and protects all these actions through schemes and laws s mentioned above.

One just needs to go to a licensed money exchange company, pay the premium for telegraphic transfer to one's account, which is instantly arranged. A very simple way of money laundering and no proceedings before the tax administration [section 111(4) of the Income Tax Ordinance 2001 gives full protection to such sham transactions]. Is there any other State in the world that gives such patronage to the criminals and tax evaders? There is open proof of such money being spent everywhere: in the ostentatious lifestyle of new urban development, in the bright galore of foreign cars on the roads, in the smugglers' markets brimming with latest foreign electronic gadgetry and in the shops crammed with foreign goods. Who says this is a poor country? The government is no doubt poor (sic) but the people are very rich - check out the number of rural people lavishly spending the good support price for their bumper wheat crop.

The chief preoccupation and addiction of this nation is money. Everybody is yearning for luxurious lives while their fellow countrymen are dying of hunger and diseases in open camps. A dangerous result of all this is that in our society all rights have become privileges and privileges have become rights. The public has a right to services like education, health and transport, but the system behaves as if it is offering a privilege. The public servant is duty-bound to serve the public, instead he behaves as if it is inconvenient to do so. Most people working for the state are no longer interested in performing their jobs but in finding ways to extract a premium from the hapless citizen. The premium or, more accurately, bribe is now an accepted practice.

Tragically, it has become a free for all society and laws that are designed to prevent this just fall by the wayside. The general attitude is of helpless resignation, an acceptance of the defeatist principle that if one is to survive one must become part of the game. It then becomes dangerously akin to the rule of jungle—might is right, the weak are meant to fall out and the predators meant to prey freely. The bleak side of the picture is that the persons—judges, politicians and bureaucrats—who are capable of checking this distortion, are not willing to oblige, for it would sever their power base and financial lifelines. If the system is to be saved from sinking into greater chaos and ultimate collapse, corrective actions must be taken forthwith. The starting point should be a clear recognition of the State's role with respect to harmonious working of legislature, judiciary and administration. The State will have to vehemently devote its entire energies to enforcing laws that protect the public from cheats and racketeers rather than supporting a system which protects and encourages them.

United States

IRS Advisers Recommend Delaying FATCA to 2015

The Information Reporting Program Advisory Committee (IRPAC) has urged the United States Internal Revenue Service (IRS) to delay the implementation date for the Foreign Account Tax Compliance Act (FATCA) by another six months, to January 1, 2015, to help withholding agents and their customers adjust to the new requirements.

FATCA, enacted by Congress in 2010, is intended to ensure that the IRS obtains information on accounts held abroad at foreign financial institutions (FFIs) by US persons. Failure by an FFI to disclose information on their US clients, including account ownership, balances and amounts moving in and out of the accounts, will result in a requirement on US financial institutions to withhold 30 percent tax on US-source income.

On July 12 this year, the US Department of the Treasury announced that FATCA implementation by FFIs would be postponed by six months to July 1, 2014, but it was only at the end of October that it provided a draft notice incorporating updates to certain due diligence, withholding and other reporting requirements, and including a draft FFI agreement.

While more detailed guidance and the FFI agreement are due to be finalized by December 31, 2013, IRPAC has now recommended that the IRS provides for an additional postponement until January 1, 2015, in order, it says, for withholding agents to complete the steps necessary to fulfill their FATCA obligations.

IRPAC confirms that withholding agents have already devoted substantial resources to the design of systems based on the draft final regulations and the associated draft forms. It is important to note, it adds, "that substantial work remains to be done and can only be undertaken after final and comprehensive guidance is issued."

It notes that "the systems development process involves a series of steps. The remaining steps include refining the scope of the project, development and documentation of technical requirements, design and coding of program changes, testing to ensure compliance with technical requirements, finalization of programming changes, and scheduling the release of systems changes. Each of these steps requires a substantial commitment of time and resources and must be undertaken sequentially."

So far, IRPAC notes, only preliminary work has been largely completed based on the guidance issued to date, and the completion of design, programming and testing can only be accomplished after the IRS has released comprehensive final guidance. – *Courtesy tax-news.com*

France

French Think Tank Assesses Exploitation of Local Tax Lever

Ahead of the upcoming municipal elections in France in 2014, French independent think tank Institut Montaigne has assessed how each of the ten major towns in France has applied the tax lever over the course of the current mandate (2008-2013), and made its prediction for the coming period.

Confirming the general trend, Institut Montaigne highlighted the fact that local taxes in France increased dramatically at the start of the mandate period, particularly in 2009 and 2010, while remaining stagnant or only posting a moderate rise over the last few years.

With the exception of Paris, local taxes predominantly comprise dwelling tax and land tax. The product of local tax equates to EUR778 (USD1,070) per inhabitant in Bordeaux, compared to EUR761 per inhabitant in Nice, EUR505 in Strasbourg, and EUR449 in Toulouse. In Paris, local taxes include dwelling tax, and land tax, as well as the levy imposed on the value added by a company (CVAE).

According to Institut Montaigne, Paris, Marseille, Nice, Rennes, and Lyon have all dramatically increased their local taxes. Indeed, local taxes have risen by almost 25 percent in all five major towns in the last six years. In Paris, the product of local taxes soared from EUR1.6bn in 2008 to EUR2.1bn in 2012, marking an overall rise of 27 percent.

In contrast, Toulouse elected to lower its local tax rates in 2010, before opting to subsequently freeze tariffs. Consequently, local taxes in Toulouse are currently 7 percent lower than in 2008. Local taxes have only risen moderately in Strasbourg between 2008 and 2013, up just 11.3 percent in total.

Criticized for being complex, obsolete, and unjust, local taxes do not always produce the desired revenue levels. Indeed, high tax rates can often be misleading. By way of example, despite imposing high rates of taxation, local taxes serve to yield very little in the French town of Lille, due to the small tax base. Similarly, despite a wide tax base and high rates, local tax revenues in Bordeaux have only risen by 15 percent over the period in question, due notably to the various tax exemptions accorded.

Concluding, the think tax stressed that there is little fiscal room for maneuver in the coming mandate, maintaining that the tax lever has been exhausted from both a technical and political point of view. All too aware that citizens in France have had their fill of tax rises, particularly in the last year, MPs have either pledged to freeze local taxes in the next term, or have provided their assurances that there will be greater justice in the tax system, following the Government's planned reform of taxation. – *Courtesy tax-news.com*

Guernsey

Guernsey Launches Aircraft Registry

The Guernsey Government has become the first of the two Channel Islands to launch an aircraft registry. Earlier it had been proposed that fellow Channel Island Jersey join forces with Guernsey to establish a combined registry. Negotiators however agreed that the project would not have been mutually beneficial, partially due to differences in the islands' tax regimes.

Announcing the registry's launch, Fiona Le Poidevin, the Chief Executive of Guernsey – the promotional agency for the island's financial services industry, said: "This is yet another landmark day for Guernsey's finance industry. In the last twelve months we have seen the development of the world's first image rights law and register, the introduction of Guernsey Foundations and now Guernsey has launched the first aircraft registry in the Channel Islands. This adds yet another service to the menu of options which we can offer our global client base."

"Guernsey has many fiduciary services providers with high net worth clients who own aircraft and now they can take advantage of the modern legislation offered by our aircraft registry. Indeed, it is expected to be particularly attractive to clients from emerging markets – such as the Middle East, Russia, and Asia – where personal luxury aircraft ownership is very popular, and it may encourage them to consider using Guernsey for their wider wealth management needs."

"Guernsey's broad-based finance industry means that we can also service many other aspects related to aircraft ownership, such as alternative financing arrangements and specialist aircraft insurance. This means that clients can come to Guernsey knowing that they have a jurisdiction which offers a "one-stop shop" to meet their aircraft needs," she added.

The registry is open to aircraft not currently used for commercial air transport, aimed mainly at owners, operators and asset managers of business aircraft, as well as aircraft lessors. Guernsey's nationality mark has been confirmed as "2" followed by four letters. – *Courtesy tax-news.com*

Income support levy: Supreme Court suspends SHC's interim order

The Sup-reme Court of Pakistan has suspended the interim order of Sindh High Court (SHC) in a matter of imposition of the 0.5 percent Income Support Levy imposed through the Finance Act, 2013. Sources told here on Wednesday that the SC has suspended the operation of SHC interim order in the civil petition number 1796 of 2013.

The SHC had granted a stay order against the imposition of the 0.5 percent Income Support Levy. It has also been learnt that the petitions are fixed for hearing on December 16 and SHC would hear the matter on day-to-day basis for deciding the case.

According to the SC order, a constitution petition filed before the High Court of Sindh had challenged the provisions of Income Support Levy Act, 2013 as being illegal and unlawful on a number of grounds and the SHC had allowed the interim relief that would allow the petitioner to file the returns of income manually without filing the Income Support Levy pro forma. It has been argued that through an interim order the provisions of law (statute) to which presumption of constitutionality is attached cannot be rendered ineffective and nugatory, directly or indirectly. Leave is granted, inter alia, to consider the above. In the meantime, operation of the impugned orders is suspended, the SC order added.

In the SHC, it was argued that the federal government does not have the authority to pass any legislation on the social welfare of the public at large. It was further argued that after the 18th Amendment the right to legislate about the social welfare issues has been devolved to provinces. If any such legislation is to be passed, it is within the domain of the provincial legislature.

The levy was challenged on grounds that it is discriminative in nature; as it is applicable and collectable from a taxpayer and 'no' other person. Secondly, the levy is a fee and cannot be passed as a Money Bill through an Act of the Parliament. Thirdly, the levy tends to take away the already taxed property of the person, which can only be taken away by the state in case of emergency. The levy is a sort of double taxation as the accumulated wealth represents income already taxed or exempted. Furthermore, it was challenged in the SHC that the constitutional guarantees given to the persons to hold property have been taken away through the passage of Income Support Levy Act, 2013, which being a fundamental right cannot be taken away, but only in a state of emergency.

It was also argued that the levy is to be recovered from persons who are paying income tax and filing their tax returns. There is no way the FBR can recover levy from persons who are out of the tax net. This alone creates a discrimination and amounts to taxing further the persons who are already being taxed. – *Courtesy Business Recorder*

Failure to deposit value addition tax: recovery proceedings launched against 600 importers

The Federal Board of Revenue has launched recovery proceedings against over 600 importers, who failed to deposit 3 percent minimum value addition tax on the imported goods during 2013.

Sources told here on Wednesday that the Project Director Computerised Risk-Based Evaluation of Sales Tax (Crest) system has issued discrepancy lists of importers containing profiles of units to the concerned Collectors of Customs Model Customs Collectorates (MCCs) for recovery of unpaid amount of tax at import stage. The Crest has detected this major discrepancy during clearance of imported consignments from ports and initiated recovery against the defaulting importers on national level.

Details of the lists revealed that the MCC Appraisement Customs House Karachi failed to collect 3 percent minimum value addition tax from over 273 units during January-April 2013. The list further revealed details of importers with National Tax Number (NTN), import value of goods, value addition tax payable and other relevant data. In another case, 43 units cleared their consignments through MCC Appraisement Customs House Lahore where minimum value addition tax has not been paid at the import stage. Similarly, 40 units have not paid minimum value addition tax during clearance of their consignments from MCC Quetta. Over 70 units cleared their consignments from MCC Appraisement Hyderabad without payment of minimum value addition tax at the import stage. Four importers cleared their consignments from MCC (Appraisement) Peshawar without payment minimum value addition tax at the import stage. Similar instructions have also been issued to remaining MCCs for necessary action against the defaulted importers.

According to the Project Director Crest communication to all Collectors of Customs, during analysis of import data from January 2013 to April 2013 by the Crest team, it has been observed that certain importers have not paid minimum value addition tax at the rate of three percent of the value of goods as required under rule 58B of chapter X of the Sales Tax Special procedure Rules, 2007 issued vide SRO.480(I)/2007 dated 9.6.2007 as amended, subsequently.

The details of such importers have been given to the Collectors of Customs. It is, therefore, requested to initiate recovery in all such cases. In case of any issue, the Crest team can be contacted by the Collector of Customs, instructions added. – *Courtesy Business Recorder*

FBR establishes help desk at MCCI

Chief Commissioner, Inland Revenue Multan, Hafiz Muhammad Jamil Owaisi has said that the Federal Board of Revenue (FBR) has established a help desk at Multan Chamber of Commerce and Industry (MCCI) to facilitate taxpayers regarding the newly introduced system for filing sales tax returns through web portal. MCCI President, Khawaja Muhammad Usman and Secretary General, Khurram Javed briefed him about working of help desk.

He said that this help desk has established to provide proper information to the stakeholders.

He assured that the FBR would also ensure technical assistance for the proposed help desk on regular basis. MCCI chief urged the concerned authorities not to make this newly introduced system of returns mandatory for all the taxpayers. It must be kept optional for six months, so that during this period taxpayers can prepare themselves for this system, he added. – *Courtesy Business Recorder*

Najeeb Qadir named chief CSTRO

Najeeb Qadir, Chief Taxpayers Audit Wing Federal Board of Revenue (FBR), has been assigned the additional charge of the post of Chief Centralised Sales Tax Refund Office (CSTRO) FBR (Hq), Islamabad, with immediate effect. According to a notification issued by FBR here on Wednesday, Dr Ashfaq Ahmad Tunio (IRS/BS-20) has been relieved from the additional charge of the post of Chief (CSTRO), FBR. – *Courtesy Business Recorder*

FBR urged to remove tax anomaly on sack kraft paper's import

Federal Board of Revenue (FBR) has been urged to remove the anomaly in taxes on sack kraft paper, as raw material for similar products ie. Woven Polypropylene (WPP) sacks enjoy duty benefits of 10 percent at the import stage, despite both being the basic raw material for the finished products.

This anomaly in duty structure has allowed WPP sack units to offer lower prices and encouraged the use of Woven Polypropylene sacks for packaging cement, to the extent that 4 new WPP units have been established in the recent past. This is threatening the existence of the Paper Bag Manufacturers that operates in the organised sector, contributing to the national exchequer and providing direct and indirect employment.

The Association pointed out that Sack Kraft Paper is globally recognised as an environmental-friendly packaging material and is derived from sustainable forests.

Furthermore, Paper Bags are primarily used for packaging cement, and then reused to make other paper products and recycled by the local paper industry to produce different grades of paper for local consumption.

On the other hand, contrary to claims by the WPP sack manufacturers, WPP bags are neither environment-friendly nor biodegradable. Recycling of WPP bags is not possible as cancerous dioxins are released in the process. Moreover, the raw material for WPP (being polypropylene granules) is derived from oil which itself is becoming scarce.

It is worth mentioning that recently "Oxo Degradable" plastic bags are being promoted, however, Oxo Degradable plastic provides the solution to the littering problem and does not make plastic biodegradable.

In developed countries of Europe and US only sack kraft paper bags are used for cement packaging, and WPP bags are mainly used in developing countries of Asia and Africa where environmental considerations are still not on the priority list. – *Courtesy Business Recorder*

C.No.4(11)ST-L&P/2011-164783 Islamabad, the 6th December, 2013

SALES TAX GENERAL ORDER NO. 53/2013

Subject: **Amendment in STGO 17/2007 dated 13-09-2007 – allowing facility of zero-rating on supply of gas.**

In exercise of the powers conferred by clause (d) of section 4 of the Sales Tax Act, 1990, the Federal Board of Revenue is pleased to make the following further amendments in its Sales Tax General Order No. 17 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the Table, after serial number 1110 in column (1) and the entries relating thereto in columns (2), (3) and (4), the following new serial number and entries relating thereto shall be **added,** namely:–

S #	Name of Unit	Registration No.	Consumer No.
1111	M/S GHAZI PROCESSING	2400520900428	19799484084

C.No.4(6)ST-L&P/2011-164783 Islamabad, the 6th December, 2013

SALES TAX GENERAL ORDER NO. 54/2013

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

In exercise of the powers conferred by clause (d) of section 4 of the Sales Tax Act, 1990, the Federal Board of Revenue is pleased to make the following further amendments in its Sales Tax General Order No. 09 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the Table, after serial number 2689 in column (1) and the entries relating thereto in columns (2), (3) and (4), the following new serial number and entries relating thereto shall be **added,** namely:–

S #	Name of Unit	Registration No.	Consumer No.
2689	M/S GHAZI PROCESSING	2400520900428	24132455504057U

No.1(8)Rev Bud/98 Islamabad, the 10th December, 2013

To:

All Chief Commissioners Inland Revenue
Large Taxpayers Units, Regional Tax Offices

Subject: **Tax Facilitation Kiosks (KIOSKS)/Tax Facilitation Centers (TFCS)**

Please refer to above subject.

2. All Chief Commissioners are requested to ensure that all Tax Facilitation Kiosks (KIOSKS) and Tax Facilitation Centers (TFCS) are immediately operational and reactivated as the last date for filling of Income Tax return is 16th December 2013 (as Sunday 15th December is gazetted holiday).

3. Acknowledgment of having received these instructions please be sent to the Board by return of tax.

(FAREENA MAZHAR)
Chief (Revenue & Operations)

C.No.4(67)ITP/2013(Pt-I) Islamabad, the 10th December, 2013

INCOME TAX CIRCULAR NO. 15/2013

Subject: **Imunity from tax audit under Section 177 and 214C read with Clause 84 of Part IV of Second Schedule to the Ordinance as per SRO.1040(I)/2013 dated 05.12.2012*.**

In exercise of the powers conferred under Proviso to clause (84) of SRO.1040/2013 dated 05-12-2013 which has further amended Part IV of the Second Schedule to the Income Tax Ordinance, 2001, Federal Board of Revenue is pleased to issue the Circular for the purposes of said proviso and to specify the Proforma to claim exemption/immunity from audit under sections 177 and 214C.

PART-I
(GENERAL)

1. The immunity from audit is available under clause 84 through SRO.1040(I)/2013 to all persons i.e. an individual, AOP and company.
2. The persons who have already filed their returns, for tax year 2013, may revise their returns to claim immunity from audit under SRO 1040/2013 dated 5.12.2013 and no approval of Commissioner under section 114(6)(ba) of the Income Tax Ordinance, 2001, shall be required.
3. The immunity is also available to persons whose income for Tax Year 2012 was exempt, but their income for Tax Year 2013 is taxable. They would pay 25% more tax as compared to tax that would have been payable if the income of tax year 2012 was not exempt.
4. Tax required to be paid to avail the concession/immunity under the said SRO is to be computed in accordance with Proforma specified in Part II. Those who have already filed their revised

* Should have been "2013"

return may file this Proforma by 31.12.2013. However, this does not amount to extension of the date for filing of returns which continues to remain 15.12.2013

5. Tax has been paid on or before the due date for filing of return.
6. Tax paid for Tax Year 2012 includes minimum tax under section 113 of the Income Tax Ordinance, 2001.
7. Cases where income declared is below the taxable limit of Rs 350,000 for Tax Year 2012 will not qualify for the said immunity/exemption.
8. For the purpose of comparison, tax paid as final tax or fixed tax or a separate block of income, shall not be taken into account either for tax year 2012 or 2013.
9. The income is not arrived at by lump sum addition.

PART-II
(PROFORMA)

The Proforma as per SRO.1040/2013 to be filed along with the Return is as under:–

a) Where income was not exempt during tax year 2012.

1	Taxable Income declared for Tax Year 2012	
2	Whether taxable income revised/amended (Y/N)?	
3	If Yes, latest amended taxable income for Tax Year 2012	
4	Tax Paid on Taxable Income	
5	25% of 4	
6	Minimum Tax Payable for Tax Year 2013 under SRO.1040/2013 (4+5)	
7	Tax Paid for tax year 2013	
8	CPR No.	
9	Whether Eligible for Immunity from audit (FOR OFFICIAL USE ONLY)	

b) Where income was exempt during tax year 2012.

1	Income declared for Tax Year 2012	
2	Whether income for Tax Year 2012 Exempt (Y/N)?	
3	If answer to 2 is yes, tax payable if it was not exempt	

4	25% of 3	
5	Minimum Tax Payable for Tax Year 2013 under SRO.1040/2013 (3+4)	
6	ax Paid for Tax Year 2013	
7	CPR No.	
8	Whether Eligible for Immunity from audit (FOR OFFICIAL USE ONLY)	

2013 TRI 2000 (S.C. Ind.)

SUPREME COURT OF INDIA

R.M. Lodha, Madan B. Lokur and Kurian Joseph, JJ.

Chironjilal Sharma HUF
v.
Union of India and Others

FACTS/HELD

Section 132B(4)(b)/ 240/ 244A: Assessee is entitled to interest on cash appropriated during search even if refund is directed in appeal proceedings

1. Pursuant to a search conducted u/s 132, cash of Rs. 2.35 lakhs was recovered. The AO passed an order u/s 132(5) in which he calculated the tax liability and appropriated the seized cash. An assessment order was also passed to the same effect. The AO's order was finally set-aside by the Tribunal and it became final. Consequently, the assessee was refunded the amount of Rs. 2.35 lakhs with interest from 4.3.1994 (date of last of the regular assessments by the AO) until the date of refund. The assessee claimed that he is entitled to interest u/s 132B(4)(b) of the Act for the period from the expiry of period of six months from the date of order u/s 132(5) to the date of regular assessment order. In other words, as the order u/s 132(5) was passed on 31.5.1990, six months expired on 30.11.1990 and the last of the regular assessments was done on 4.3.1994, the assessee claimed interest u/s 132B(4)(b) from 1.12.1990 to 4.3.1994. HELD by the Supreme Court:

    The department's argument that the refund of excess amount is governed by s. 240 and that s. 132B(4)(b) has no application is not acceptable. S. 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and s. 240 or for that matter s. 244(A). The former deals with pre-assessment period in the matters of search and seizure and the later deals with post assessment period as per the order in appeal. The department's view is not right on the plain reading of s. 132B(4)(b) and the assessee is entitled to simple interest at the rate of 15% per annum u/s 132B(4)(b) from 1.12.1990 to 4.3.1994. The interest shall be paid within two months from today.

Appeal allowed.

Civil Appeal No. 10601 of 2013 [Arising out of S.L.P. (C) No. 20381 of 2012].

Decided on: 26th November, 2013.

Present at hearing: Arijit Prasad, for Respondent.

JUDGMENT

Sanjiv Khanna, J.–

Leave granted.

2. The brief facts necessary for consideration of the issue raised in the appeal are these: In the search conducted in the house of the appellant on 31.1.1990, a cash amount of Rs. 2,35,000/- was recovered. On 31.5.1990, an order under Section 132(5) of the Income Tax Act, 1961 (for short "the Act") came to be passed. The Assessing Officer calculated the tax liability and the cash seized in the search from the appellant's house was appropriated. However, the order of the Assessing Officer was finally set-aside by the Income Tax Appellate Tribunal (for short "the Tribunal") on 20.2.2004. The revenue accepted the order of the Tribunal. Consequently, the appellant has been refunded the amount of Rs. 2,35,000/- along with interest from 4.3.1994 (date of last of the regular assessments by the Assessing Officer) until the date of refund.

3. The appellant (assessee) claims that he is entitled to interest under Section 132B(4)(b) of the Act which was holding the field at the relevant time for the period from expiry of period of six month's from the date of order under Section 132(5) to the date of regular assessment order. In other words, the order under Section 132(5) of the Act having been passed on 31.5.1990, six months expired on 30.11.1990 and the last of the regular assessments was done on 4.3.1994, the assessee claims interest under Section 132B(4)(b) of the Act from 1.12.1990 to 4.3.1994.

4. Section 132 of the Act deals with search and seizure. Sub-section (5) thereof, which is relevant for the purposes of the present appeal, reads as under:

> (5): Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) is seized under sub-section (1) or sub-section (1A), as a result of a search initiated or requisition made before the Ist day of July, 1995, the Income-tax Officer, after affording a reasonable opportunity to the person

concerned of being heard and making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Joint Commissioner) –

(i) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;

(ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Income Income-Tax Act, 1922 (11 of 1922), or this Act;

(iia) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian Income-Tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment;

(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of section 230A in respect of which such person is in default or is deemed to be in default,

and retain in his custody such assets/or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized:

Provided that if, after taking into account the materials available with him, the Income Tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total amount chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly:

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (ii), (iia) and (iii) or any part thereof, the Income-Tax Officer may, with the previous approval of the Chief Commissioner or Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case."

5. Section 132B deals with the payment of interest on delayed assessment. Omitting the unnecessary part, the relevant provisions of Section 132B(4)(a) and(b) of the Act read as under:

> 132B: Application of retained assets..................
>
> (4)(a) The Central Government shall pay simple interest at the rate of fifteen per cent per annum on the amount by which the aggregate of money retained under Section 132 and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause 3 of subsection (5) of that section exceeds the aggregate of the amounts required to meet the liability referred to in clause (i) of sub–section (1) of this section.
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> (b) Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under sub-section 5 of section 132 to the date of the regular assessment or reassessment referred to in clause (i) of sub-section (1) or, as the case may be, to the date of last of such assessments or reassessments.

6. A close look at the above provisions and, particularly, clause (b) of Section 132B(4) of the Act clearly shows that where the aggregate of the amounts retained under Section 132 of the Act exceeds the amounts required to meet the liability under Section 132B(1)(i), the department is liable to pay simple interest at the rate of fifteen percent on expiry of six months from the date of the order under Section 132(5) of the Act to the date of the regular assessment or re-assessment or the last of such assessments or reassessments, as the case may be. It is true that in the regular assessment done by the Assessing Officer, the tax liability for the relevant period was found to be higher and, accordingly, the seized cash under Section 132 of the Act was appropriated against the assessee's tax liability but the fact of the matter is that the order of the Assessing Officer was over-turned by the Tribunal finally on 20.2.2004. As a matter of fact, the interest for the post assessment period i.e. from 4.3.1994 until refund on the excess amount has already been paid by the department to the assessee. The department denied the payment of interest to the assessee under Section 132B(4)(b), according to Mr. Arijit Prasad, learned counsel for the revenue on the ground that the refund of excess amount is governed by Section 240 of the Act and Section 132B(4)(b) of the Act has no application. But, in our view, Section 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and Section 240 or for that matter 244(A). The former deals with preassessment period in the matters of search and seizure and the later deals with post assessment period as per the order in appeal.

7. The view of the department is not right on the plain reading of Section 132B(4)(b) of the Act as indicated above.

8. We, accordingly, allow the appeal and setaside the impugned order and hold that the appellant is entitled to the simple interest at the

rate of fifteen percent per annum under Section 132B(4)(b) of the Act from 1.12.1990 to 4.3.1994.

9. The revenue shall calculate the interest payable to the assessee as above and pay the same to the appellant (assessee) within two months from today.

No costs.