Tax Review/Taxation

Daily Alert Service

Huzaima & Ikram
January 16, 2014

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@aacp.com.pk 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**

  Of FBR corruption & tax evasion

- **TAX NEWS**

  Honduras raises its VAT rate

  Andorra creates new tax and border department

  Cypriot VAT hikes take effect

  Tax notices irk auto vendors

  Inputs used in export goods' making: duty drawback rates not revised

  Pral management: legal lacunas deprive employees of their December salary

  'We've to be ready for surgical operation,' Dar tells traders

  Ishaq Dar assures quick resolution of budget anomalies

- **STATUTES**

  Sales Tax General Order No. 04 of 2014, dated January 10, 2014

  Sales Tax General Order No. 05 of 2014, dated January 10, 2014

  Sales Tax General Order No. 06 of 2014, dated January 13, 2014

- **CASE LAW**

  FOREIGN

  Commissioner of Income Tax-TDS
  v.
  DHTC Logistics Ltd.

Kind Regards,

Huzaima Bukhari
Editor

Online Update is a special e-mail service that is part of your online subscription

AA Consultants & Publishers

Suite # 14, 2nd Floor, Sadiq Plaza, Regal Chowk, Mall Road,
Lahore, Pakistan
Phone. 042-36365582 & 042-36280015 Fax 042-35310721
Email: sales@aacp.com.pk website: http://aacp.com.pk

Of FBR corruption & tax evasion

by
Huzaima Bukhari & Dr. Ikramul Haq

The Federal Board of Revenue (FBR), infamous for corruption and inefficiency, is now turned into House of Fraudsters. The recent news of tax frauds and scams—fake refunds, non-collection of tax by withholding agents, flying invoices, under invoicing, excessive payments of export rebate, just to mention a few—confirm that even the present government, despite tall claims, has failed to eliminate mafia-like operations in FBR. While unholy alliance between corrupt tax officials and unscrupulous elements is depriving the nation of billions of rupees, the government through Statutory Regulatory Orders (SROs) is criminally giving benefits to the rich and mighty—shifting the incidence onto the poor through exorbitant indirect taxes.

A report published in an English daily on January 14, 2014, '**No steps taken to recover Rs128bn from fraudsters**' reveals that "the Regional Tax Offices (RTOs), Karachi remain unable to take any action against individuals involved in the tax fraud of Rs. 128 billion". The report quotes an official on request of anonymity that "the amount of Rs. 40 billion relates to 4,000 registered sales tax units with the three RTOs, obtained on fake invoices and Rs. 88 billion where illegal input adjustment was made". The report quotes an official document showing that that the three RTOs blacklisted the sales tax registration of around 4,000 persons under section 21(3) of the Sales Tax Act, 1990 that were involved in tax fraud, "but no measures have been taken by so far to recover the evaded amount awarded to them with the collaboration of some senior tax officials". The report alleges that delinquent officers have been cleared covertly despite the fact bogus purchases were made from blacklisted suppliers. The report further reveals that a comprehensive report was submitted in June 2013 against persons involved in the scam, but "the senior tax officials are deliberately delaying the matter". The official document, according to report, "also criticises the role of the Directorate General of Intelligence and Investigation for supporting the criminals by just issuing 'Red Alerts' instead of lodging FIRs against them knowing these have no legal force".

After the World Bank-funded six-year-long Tax Administration Reforms Programme (TARP), FBR has been making tall claims about its automation efforts. All the chairmen of FBR, who headed the apex revenue authority for the last 10 years, have been assuring the public from time to time that after introduction of automated procedures in all the departments, the possibilities of tax fraud had been effectively countered. But the facts and figures show that since 2005 when computerized processes were introduced, the incidences of tax frauds increased substantially as compared to the days when manual procedures were in vogue. This means that before going for automation, neither

system analyses were properly conducted nor quality and training of human resource employed was ensured.

The number of tax scams surfaced since 2005 and huge quantum involved testify to the fact that there is a complete failure on the part of FBR to implement preemptive measures against tax frauds despite having a number of support organisation like Directorate General of Intelligence and Investigation, Directorate General of Customs Valuation, the Directorate General of Post Clearance Audit, the Directorate General of Internal Audit, the Directorate of Input-Output Coefficient Organisation, Project Director WeBOC and the Directorate General of Training and Research. It is an undeniable fact that the officers and staff involved in tax frauds are seldom, rather rarely, punished— for frauds committed between 2005 to 2012 see '***Sordid story of tax frauds***', *Business Recorder,* February 1-3, 2013. The present Chairman of FBR must read it and take appropriate action. He should also consider the recommendations of one-member commission submitted to Supreme Court of Pakistan in October 2013 for curbing tax evasion and corruption rampant in FBR.

The present government has made a commitment to the International Monetary Fund (IMF) that it would amend the Anti-Money Laundering Act, 2010 to include tax crimes in the Schedule of Offences to enable the use of anti-money laundering tools to combat tax frauds, by end-June 2014. According to the Letter of Intent dated December 5, 2013 available on the IMF website, the government of Pakistan undertakes "…to broaden the tax net through elimination of most tax exemptions and loopholes granted through SROs". Strangely, since the start of the programme, the government has issued SROs granting blanket amnesty from probe into source of investment in new industries. Additionally, section 111(4) of the Income Tax Ordinance, 2001—a permanent amnesty scheme—is still in operation. It debars any probe into source of remittances received through normal banking channels. This despicable provision of law provides evaders complete protection in respect of un-taxed money. No question can be asked by the tax authorities if untaxed money is remitted from outside (*modus operandi* of tax evaders and criminals is to first send money abroad through *hundi*/*hawala* and then get it back as foreign remittance)—many money exchange dealers extend this service for a small premium of 1 to 2 percent. We have been highlighting the disastrous ill-effects of this law since its introduction, but people who matter in the land have never paid any heed.

Prime Minister of Pakistan, Finance Minister and IMF people must be aware of the fact that even today, FBR through its Letter No.F.4(34)/ITP/2002 dated 29-02-2002 reaffirms that **"the Department would adhere to its policy of not probing the foreign remittance" brought into Pakistan by any "person"**. Terrorists, tax evaders, smugglers, corrupt officials, extortionists, drug barons and criminals do not need any special amnesty scheme as it is available permanently in

the shape of section 111(4) of the Income Tax Ordinance, 2001. This provision is a slap on the face of honest taxpayers. An extortionist can decriminalize his ill gotten money through this provision but any honest businessman who pays that extortionist due to shameless failure or connivance of law enforcement apparatus cannot even claim it as an expense in his tax return! In the face of this reality, the recent move to establish a committee for gradual withdrawal of SROs [**'Committee notified: governments acts to deal with concessionary SROs', ***Business Recorder*, January 4, 2014] is nothing but eyewash. There is no intention to scrap section 111(4) of the Income Tax Ordinance, 2001.

Pakistan, faced by huge budgetary and current account deficits, is in dire need of resource mobilisation. Instead of raising taxes for already depressed economy, giving free perks and plots and extending concessions through SROs, the government must devise a well-thought-of anti-money laundering-cum-asset-seizure legislation to draw upon the huge reservoir of untaxed money and utilise it for growth. If swift action is not taken to seize money and property arising out of corruption, tax evasion and narco-arm-trade, we are bound to face collapse.

Honduras

Honduras raises its VAT rate

Honduras has raised its headline VAT rate from 12 percent to 15 percent, with effect from January 1, 2014. This came through Decree No 278/2013, which included many other tax measures in order to increase tax revenue.

About 1,000 people have reportedly taken to the streets in order to protest against the recent tax rises.

Regarding VAT itself, this painful move hasn't come without problems. Not only has the VAT rate been hiked, but also a number of VAT exemptions have been removed by the reform. In addition, the VAT rate for alcoholic beverages is now 18 percent.

VAT exemptions previously concerned about 300 types of items. As of now, only 72 of these products are still not subject to VAT, restricting exemption to the most basic items, such as, among others: milk; fruits; vegetables; fish; chicken; coffee; white cheese; eggs; sugar; flour; bread; corn; and rice. One piece of good news for consumers though: this is better than the smaller list of 35 items initially planned by the Government.

Although this list shows the Government has tried to spare the poorest, Hondurans' already low purchasing power is likely to be badly affected. In fact, the tax reform introduces stiff tax rises for other previously exempt essential items, such as energy.

From a practical point of view, Honduran retailers will have to systematically review the receipts they issue. This is because these receipts are pre-printed and they are based on the previous 12 percent VAT rate. Thus, retailers must manually apply the 15 percent rate on their receipts, and they will have to do so until they exhaust their existing stocks of receipts. Thus even from an administrative point of view, the VAT increase is proving painful. *– Courtesy tax-news.com*

Andorra

Andorra creates new tax and border department

Andorran Finance Minister Jordi Cinca and Tax Affairs Director Albert Hinojosa have presented details of the decree governing the functioning of the Principality's new Tax and Border Department.

Attached to the Finance Ministry, the department will be responsible for application of both the general administration tax

system and the customs system, following the merger of the Tax Department and the Customs Department.

Cinca and Hinojosa explained that the Andorran Tax and Border Department will be tasked with ensuring efficient implementation of the tax and customs systems, including management, assessment, collection, inspection and enforcement of the country's tax penalty regime, control of revenue collection, participation in the drafting of legislation, and responding to tax queries.

Finance Minister Cinca described the new body as "a transitory and necessary step" towards the creation of the future Tax and Border Agency, an autonomous unit intended to manage all state taxes.

The objective is to establish the taxes, the new organizational structure, and computer applications in 2014, to guarantee that the system functions correctly, Cinca revealed, noting that no new taxes are due to enter into force in Andorra this year. – *Courtesy tax-news.com*

Cyprus

Cypriot VAT hikes take effect

Cyprus's headline and intermediate value added tax rates were increased by one percent, as scheduled, from January 13, 2014.

The headline rate, levied on 80 percent of goods and services, rose from 18 percent to 19 percent. The 8 percent reduced rate was increased to 9 percent. This reduced rate applies to accommodation services, food and drink sold by restaurants and eateries, catering services, and the transportation of passengers and their luggage within Cyprus.

The two hikes were agreed as part of the bailout negotiated with the troika of lenders in March 2013. Cyprus earlier increased its headline rate from 15 percent to 17 percent from March 1, 2012, and again to 18 percent with effect from January 14, 2013. The territory's other reduced rate, set at the EU minimum of 5 percent, has remained unchanged.

Even after the two hikes, Cyprus retains one of the most competitive headline rates in the European Union, bettered only by Luxembourg (15 percent) and Malta (18 percent). – *Courtesy tax-news.com*

Tax notices irk auto vendors

The Federal Board of Revenue (FBR) has started serving notices to the auto vendors to deposit two per cent additional tax under SRO 896(I)/2013 on their supplies to retail market and to the assemblers.

Vendors said that the notices being issued by regional tax offices violate the agreement between the tax authority and the stakeholders of auto industry. It was agreed that the industry would pay additional tax on retail supply and not on delivery to the auto assemblers, they said.

According to them, the SRO is not worded correctly and not in line with what was agreed with the auto parts vendors association. It is creating confusion in the organised OEMs auto chain.

They said that despite repeated requests the industry is still awaiting amendments to the said SRO wherein it was agreed that auto parts industry would be removed from Third Schedule of the Sales Tax Act 1990 to pay extra 2pc tax for sales of auto parts at retail stage only.

Usman Aslam Malik, the chairman of Pakistan Association of Auto Parts and Accessories Manufacturers (PAAPAM), said: “One of the cardinal principles of taxation is that it should be levied on the basis of ‘capacity to pay’ whereas auto industry is already heavily taxed resulting in increase in price of vehicles.”

He said small suppliers do not have the capacity to manage this cumbersome paper work related to deduction of tax on purchases from smaller suppliers.

Criticising amendment in the Third Schedule of Sales tax Act, he said the change in law had created many hardships for the local manufacturers, rendering the industry totally uncompetitive against imported parts, which already command 90pc of the market due to under invoicing, non-declaration and smuggling, no sales tax on retail prices. – *Courtesy Dawn.com*

Inputs used in export goods’ making: duty drawback rates not revised

The Federal Board of Revenue (FBR) has not revised the duty drawback rates on the import of raw materials/inputs used in the manufacture of export goods under standard duty drawback notifications after budget (2013-14). Sources told here on

Wednesday that duty drawback standard SROs are required to be revised in case there is 15 percent increase/decrease in rate of the customs duty on the import of raw materials etc to be used in the export goods.

This has been specified in the relevant rules dealing with the duty drawback rates. However, there is no major change in the rates of the customs duty on the import of inputs consumed in the manufacture of export goods under Pakistan Customs Tariff (PCT). Therefore, the FBR has not amended the standard duty drawback notifications during 2013-14.

Every year, it is general practice that the FBR revises the duty drawback rates in view of the prevailing exchange rate of dollar against the rupee and tariff reductions made in the federal budget. As there is no major revision in duty structure on the import of materials in 2013-14, the annual revision of duty drawback rates has not been done incorporating the new exchange rates.

At present, standard duty drawback notifications ie SRO.209, SRO.2010, SRO.2011 and others are dealing with the duty drawback regime. For the calculation of duty drawback rates, important factors like new rate of customs duty, exchange rate; revised customs tariff; Cost and Freight (C&F) value ie import value of inputs goods and Freight on Board (FOB) value of exported goods have to be taken into account.

However, the revised calculation of duty drawback rates has been carried out in case when there is a requirement to revise the rates. The payment of duty drawback has been done on the basis of FOB value of the export goods or weight calculated in kilograms, depending on the type of product specified in the standard duty drawback notifications. Thus, there is no need for annual revision of duty drawback rates during current fiscal year following tariff rationalisation in 2013-14 budget. – *Courtesy Business Recorder*

Pral management: legal lacunas deprive employees of their December salary

The employees of the Pakistan Revenue Automaton Limited (Pral), a subsidiary of the Federal Board of Revenue (FBR), are not able to get their monthly salary for December 2013 up till now due to procedural and legal lacunas in the management of Pral.

It has been reliably learnt here on Wednesday that panic-like situation was witnessed among the Pral employees due to non-

payment of monthly salary, casing great concerns among all working in the said department. The non-payment of pay is due to delay in forwarding of Pral salary file to the Accountant General of Pakistan (AGP). Till January 15, the employees are waiting for release of their salaries from the competent authorities.

Recently, the FBR has revised job description of FBR Member Information Technology. Member IT has been empowered to oversee cleansing of existing data; supervise Pral's overall management, including administrative, financial and technical activities; monitor and evaluate overall performance of CEO, Pral; serve as an essential interchange for all communications between Pral and FBR(HQ)/ its field offices; spearhead the process of developing the audit methodology to assure audit quality; deal with all legal, administrative and financial matters relating Pral, including agreement/contract and verification of invoices raised by Pral.

FBR Member IT has been further empowered to monitor and control software development and implementation by Pral/external vendors and grant mandatory prior approval for initiating new or modifying/enhancing/shelving existing software application; undertake periodic System Audits for Quality Assurance, especially security of the Operational Software, under development or developed and deployed, and resource Management for such System Audits; constitute user groups for various ICT activities; liaise with other Wings of FBR for Business Need Analysis and co-ordinate with Directorates General (T&R) for ICT Training of end-users. Practically, the management and administration has been brought under the control of FBR IT Wing. So far, the FBR IT Wing has not completed the necessary formalities for timely payment of monthly pay to the Pral employees, sources added. – *Courtesy Business Recorder*

'We've to be ready for surgical operation,' Dar tells traders

By the end of current fiscal year the existing revenue collection will be doubled, Federal Finance, Revenue, Economic Affairs, Statistic and Privatisation, Senator Muhammad Ishaq Dar made these remarks during a meeting of Karachi Chamber of Commerce and Industry (KCCI) on Wednesday. He said that efforts have been made to bring budget deficit to 4 percent and hinted at imposition of more taxes in future, but did not elaborate.

He said "We have to be ready for surgical operation. We contested election on a manifesto and we are ready to follow it however difficult the way may be." He quoted the quarterly report of statistical department and said GDP ratio has increased from 2.9 percent to 5 percent.

The Finance Minister said the government is undertaking reforms which are sometimes painful. It is also working on a policy to tap hydro carbon resources as there are reports of proven reserves. According to him, the government will soon announce hydro carbon exploration and development policy.

He said he has directed chairman Federal Board of Revenue to issue NTN numbers to all parliamentarians by January 31 and a directory of parliamentarians carrying their NTN numbers, tax paid by them and their names will be published by February 14, 2014. He said all Parliamentarians are paying taxes. He, however, did not agree with a suggestion of publishing a tax directory of tax evaders whose details have already been acquired by the FBR from banks and National Database Registration Authority (NADRA).

He said that the projected fiscal deficit of last year was reduced from 8.8 percent to 8.2 percent with prudent fiscal management by the present government, which was further brought down to 8 percent by provincial surpluses. He said another challenge for the government was the clearance of circular debt which was cleared as it was legally, commercially and ethically binding on the government since it was a contractual obligation. That it added 1700MW to the national grid and helped increase generation up to 14500MW which in turn helped achieve 5 percent growth in the first quarter. He said due to wrong policies and decisions of the previous governments, the government had to take loans from the IMF. He mentioned that India had came out of the IMF programme and hoped that Pakistan's economic situation would also improve.

The IMF diligence helped the present government in re-engaging with international institutions. There is no harm to borrow and create assets but certainly bad if it is used for current expenditures, he added. He also disclosed that the remittances have shown an increase of 9 percent which reached 7.78 billion dollars while exports have increased to 12.64 billion dollars showing an increase of 5 percent . The commercial banks had increased credit to the private sector to Rs 250 billion against Rs 73 billion which reflected a increase in economic activity, similarly

the revenue collection has also shown a growth of 17 percent in the first 5 months as compared same period last year.

He said he was confident that Pakistan's foreign exchange reserves would reach 16 billion dollars by the end of December 2014. The finance Minster said government has decided to revive Karachi Circular Railway project and approached Japan International Co-operation Agency (JICA) which has committed to funding the project.

He said JICA would provide up to two billion dollars for the project on soft terms and soon talks on this project with the Japanese agency would be initiated. "The government has prepared a plan to achieving medium term targets under which Gross Domestic Product (GDP) growth to gradually rise to around 6-7 percent, investment to GDP ratio to rise from 12.6 percent to 20 percent, Tax to GDP ratio to rise from 8.5 percent to 13 percent, fiscal deficit to be brought down from 8.8 percent to 4 percent of the GDP, foreign exchange reserves to be increased to around 20 billion dollars , public debt to be reduced to below 60 percent of the GDP as per statutory requirement," Dar said.

He said the discretionary funds of the Prime Minister and all ministers had also been abolished, which will save Rs 40 billion annually. Dar said an additional amount of Rs 2 billion will be saved, as there will be a bar on secretaries not to become part of any board.

The Finance Minister said the government had banned the import of duty free vehicles to improve national economy. The Finance Minister said through GSP Plus status, exports of the country were expected to increase by 1.5 to 2 billion dollars.

He added that agreements with four IPPs for conversion from furnace oil to coal -based with 24 months would lead to savings and lower cost of electricity generation in the country. About the financial gains of the clearance of the circular debt, the Minister said that by paying the debt government has saved Rs 67.2 billion of the national exchequer while annual net gains in savings would be Rs 54.4 billion. He advised KCCI to form a committee to interact with the minister on issues Ishaq Dar said the government would not compromise on the operation being carried out against terrorists in Karachi. He said the Karachi operation would continue. – *Courtesy Business Recorder*

Ishaq Dar assures quick resolution of budget anomalies

Federal Minister for Finance and Economic Affairs, Senator Muhammad Ishaq Dar on Wednesday advised Karachi Chamber's leadership to constitute a committee for resolution of tax and customs issues/anomalies relating to Federal annual budget FY 14, with the Government.

"You come with a committee and sit with Federal Board of Revenue authorities for settlement of the budget anomalies, you have identified," the Minister addressed the members of Karachi Chamber of Commerce and Industry (KCCI) here at an interactive meeting with them.

He assured that the anomalies requiring structural changes would be done away with immediately. Whereas, other anomalies would be worked out within shortest possible time.

The Government holds private sector as the major player in the national economy and development and wanted to provide a level field to it, he said.

The Minister responded to the reservations on the last budget shown by KCCI leadership including its President Aamir Abdullah Zaki, Siraj Kassem Teli and Chairman, Pakistan Apparel Forum Muhammad Jawed Bilwani and their complaints that the concerned government functionaries normally take long time for the settlement of the budget anomalies and then next annual budget is announced.

He also assured to M. Jawed Bilwani that the issue of levying sales tax on value-adding export sectors and then refunding the same to the exporters would also be revisited to make it practical and supportive for increasing the exports of the country.

He underlined the need for due exploration of large natural resources of the country including big deposits gas for making the country an economic power and a developed state.

The Federal Finance Minister assured the business community that their recommendations/suggestions would well taken and discussed in detail with their representatives before finalizing the next annual federal budget.

"Last year, we had a little time to announce the budget," he explained.

Senator Muhammad Ishaq Dar called for value-addition and diversification of our products especially textile products for

capturing more share and find new regional and international markets.

He sought cooperation from KCCI and other trade bodies to bringing more tax-payers into tax net as without increasing tax-GDP ratio , the country cannot prosper.

“Of total more than 180 million population, we have only 8.5 million tax-payers,” he regretted.

To a question on levying tax on agriculture, the Federal Finance Minister replied that it is now provincial subject. However, when he was the Finance Minister during last PML-N government, he had introduced the agricultural tax in all the four provinces.

He said the Government has planned to publish a directory of the businessmen of the country who pay due taxes. This would help identify /isolate a big population of non-taxpayers in the country.

When the KCCI leadership argued that the directory would made public the details of the businesses and the financial status of the business community members , it would create security risk for them especially in the persisting environment of Karachi.

“Extortionists would find very easy to target the business people by assessing their financial position with the help of this directory,” Siraj Kassem Teli remarked.

The Minister showing his soft corner said, “ Ok, this would be done after due consultation with you people.”

“However, the Government sees it as a practical step to identify non-taxpayers. This directory would be in the national interest,” he asserted adding that only name of business person, and of the company/business and NTN number would be published through this directory which would create no problem for the business community.

He also announced that the Government would also made public a directory about the Parliamentarians of the country on 15th of February 2014. This would show their wealth, income and the taxes paid by them.

“The Government would never compromise and would publish this directory on fixed date,” he remarked. – *Courtesy Business Recorder*

C.No.4(10)ST-L&P/2011-5692-R Islamabad, the 10th January, 2014

SALES TAX GENERAL ORDER NO. 04/2014

Subject: **Amendment in STGO 07/2007 dated 13-09-2007 – withdrawal 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. 07 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the Table, following serial numbers in column (1) and entries relating thereto in columns (2), (3) and (4) shall be **omitted;**

S #	S.No. in the STGO	Name of Unit	Registration No.	Reference No. Consumer No.	Reason
1	263	Exquisite Textile Ind.	1100580201082	2750365764812 AP 069970 AL 810428	RTO Recommendation
2	268	Fabrica	1100511130064	AP 078490	
3	315	GIA Associates (PVT) LTD	1200580200655	2305677111103 2808466801075 2808466801083 2808466806492 BL 00157 AL 207913 BH 000178	
4	526	Mateen Corporation	1100119004464	2900465669258	
5	544	Modren Fabrics (PVT) LTD	1200551150637	2808456871067	
6	623	Noorani & Co	1100620081791	2850355850308 2850355850316	
7	821	Syncotex Agencies	1200520800655	AP 060099 AP 085865 AP 062288	
8	1002	Faisal Shehzad Weaving Mills (PVT) LTD	1121999956337	2305677356009 BH 000407	
9	1016	Shan Tex	1700590007619	2706457750231	
10	1098	Burraq Knits	1200610304219	AP 076105	
11	1211	Asif Industries	1100520865573	2506467471102 AP 073450	

C.No.4(4)ST-L&P/2011/5706 Islamabad, the 10th January, 2014

SALES TAX GENERAL ORDER NO. 05/2014

Subject: **Amendment in STGO 11/2007 dated 13-09-2007 – withdrawal 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. 11 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the Table, following serial numbers in column (1) and entries relating thereto in columns (2), (3) and (4) shall be **omitted;**

S #	S.No. in the STGO	Name of Unit	Registration No.	Reference No. Consumer No.	Reason
1	87	Hammad Cotton Waste Factory	0912520200282	24232722913005U (Old) 24123630366600U (New)	RTO Recommendation
2	110	K.T. Surgical	0905901815346	21224114856000U	
3	196	Sunlike Industries	0905901820291	21221500236012U	

C.No.4(5)ST-L&P/2011-6349 Islamabad, the 13th January, 2014

SALES TAX GENERAL ORDER NO. 06/2014

Subject: **Amendment in STGO 08/2007 dated 13-09-2007 – withdrawal 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. 08 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the Table, following serial numbers in column (1) and entries relating thereto in columns (2), (3) and (4) shall be **omitted;**

S #	S.No. in the STGO	Name of Unit	Registration No.	Consumer No. Reference No.	Reason/RTO Recommendation
1	541	SHAHNAWAZ TEXTILE MILLS LTD	0305520212291	24191991770034u	LTU Recommendation
2	544	SHAHRAJ FABRICS	0302520801291	24117419109010U 24174191090106U	
3	591	TAJ TEXTILE MILLS LTD	0305520203128	24191990290000U	

2014 TRI 99 (H.C. Del.)

HIGH COURT OF NEW DELHI

Sanjiv Khanna and Sanjeev Sachdeva, JJ.

Commissioner of Income Tax-TDS
v.
DHTC Logistics Ltd.

FACTS/HELD

Section 272B penalty on deductor for wrong/ non-stating of PAN in TDS return is not applicable if information is not furnished by deductee. Penalty is Rs. 10000 per deductor and not per wrong PAN

1. The assessee filed a TDS return in which the PAN of 30,706 deductees was either missing or was incorrectly stated. The AO held that as penalty of Rs. 10,000 u/s 272B was levaible for the non-mentioning of the PAN, the penalty had to be computed per PAN/deductee. He accordingly levied penalty of Rs. 30.70 crore at the rate of Rs. 10,000 per deductee. The CIT(A) restricted the penalty to Rs. 10,000 on the ground that as per the CBDT's letter dated 05.08.2008 bearing No. 275/24/2007-IT(B), s. 272B penalty is linked to the person/ deductor and not with the number of defaults in the PAN quoted in the TDS return. The Tribunal upheld the view of the CIT(A) (order attached). On appeal by the department to the High Court HELD dismissing the appeal:

   There are two reasons why the appeal cannot be entertained. Firstly, the AO in the penalty order u/s 272B has not specifically referred to any default or failure by the assessee mentioning PAN Number even when the said particulars and details were available. The stand taken by the assessee was that the PAN Numbers were not furnished by the truck owners and, therefore, they were not quoted by them or PAN Numbers as informed were quoted. In case, the PAN Numbers are not furnished by the deductees, the assessee cannot be penalized u/s 272B. S. 139A also imposes the obligation on the deductees to furnish PAN Number to the deductor. Secondly, the stand

taken by the revenue is contrary to the stand taken by the CBDT. The AO had imposed penalty of Rs.10,000/- in each case where PAN Number was not provided by the deductee. However, the CBDT has in letter dated 5.8.2008 vide No.275/24/2007-IT(B) clarified that penalty of Rs.10,000 u/s 272B is linked to the person, i.e., the deductor who is responsible to deduct TDS, and not to the number of defaults regarding the PAN quoted in the TDS return. Therefore, regardless of the number of defaults in each return, maximum penalty of Rs.10,000/- can be imposed on the deductor. Penalty cannot be imposed by calculating the number of defective entries in each return and by multiplying them with Rs.10,000/-. This also appears to be a legislative intent, as in many cases, the TDS amount may be small or insignificant fraction of Rs.10,000. (Clarified that the Q whether penalty u/s 272B can be imposed if the deductor has not correctly recorded the details despite proper representation by the deductee is not decided)

Appeal dismissed.

ITA No. 314 of 2013.

Decided on: 26th July, 2013.

Present at hearing: Karan Khanna, Sr. Standing Counsel, for Appellant. None, for Respondent.

JUDGMENT

Sanjiv Khanna, J.–

1. There are two reasons why we feel the present appeal should not be entertained.

2. Firstly, the assessing officer in the penalty order under Section 272B has not specifically referred to any default or failure by the respondent-assessee mentioning PAN Number even when the said particulars and details were available. The stand taken by the respondent was that the PAN Numbers were not furnished by the Truck owners and, therefore, they were not quoted by them or PAN Numbers as informed were quoted. In case, the PAN Numbers are not furnished by the deductees, the respondent- assessee cannot be penalized under Section 272B. Section 139A also imposes the obligation on the deductees to furnish PAN Number to the deductor.

3. Secondly, the stand taken by the revenue is contrary to the stand taken by Central Board of Direct Taxes. The assessing officer had imposed penalty of Rs.10,000/- in each case where PAN Number was not

provided by the deductee. There were in all 30706 cases in which the PAN Number was missing or was incorrectly stated. The assessing officer, accordingly, imposed penalty of Rs.10,000/- in each case. Thus, penalty of Rs.30,70,60,000/- was imposed. Board in the letter dated 5.8.2008 vide No.275/24/2007-IT(B) has clarified that penalty of Rs.10,000/- under Section 272B is linked to the person, i.e., the deductor who is responsible to deduct TDS, and not to the number of defaults regarding the PAN quoted in the TDS return. Therefore, regardless of the number of defaults in each return, maximum penalty of Rs.10,000/- can be imposed on the deductor. Penalty cannot be imposed by calculating the number of defective entries in each return and by multiplying them with Rs.10,000/-. This also appears to be a legislative intent, as in many cases, the TDS amount may be small or insignificant fraction of Rs.10,000/-.

4. We clarify that we have not examined in this appeal, question and issue that if a deductee has made a representation to the deductor and inspite of the said representation, proper details and particulars are not correctly mentioned/recorded by the deductor, whether penalty under Section 272B can be imposed, as a separate case.

5.In view of the aforesaid position, we do not think any substantial question of law arises for consideration.

INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH, NEW DELHI

S.V. Mehrotra, Accountant Member and Kulbharat, Judicial Member

Appeals dismissed.

I.T.A .Nos.-675,676 & 677/Del/2012 (Assessment Year-2005-06 to 2007-08).

Heard on: 5th September, 2012.

Decided on: 14th September, 2012.

Present at hearing: S.Krishna, CIT DR, for Appellant. Rakesh K. Sehgal, CA, for Respondent.

JUDGMENT

Per Kulbharat:– (Judicial Member)

These three appeals of the assessee are directed against the order of Ld. CIT(A)-XXX, New Delhi dated 17.11.2011 for the AYs 2005-06 to 2007-08.

2. All these appeals are arising out of common order and raised identical grounds of appeal. Hence, these are heard together and are being disposed off by a consolidated order.

3. The revenue has raised the identical grounds of appeal in all the three appeals which reads as under:–

> *"1). In deleting the penalty of Rs. 30,70,30,000/- levied u/s 272B of the IT Act by the A.O Cir. 49(1) holding that the penalty is per person (appellant) and not per PAN.*
>
> *2). In directing the A.O to collect the penalty demand of Rs. 30,000/- u/s 272B of the IT Act as per per person (appellant) per year.*
>
> *3). In appreciating the fact that the Section 139(5B) is to be read in conjunction with Section 272B, if these two sections are read together, the intend of the legislation becomes apparent that the penalty is to be levied per PAN in the TDS return and not per person."*

The facts are identical in all these appeals, hence the facts of ITA No.675/Del/2012 are being taken as a lead case.

4. The facts in brief are that the Assessing Officer issued a show cause notice for levying penalty u/s 272B r.w.s 139A(5B) in respect of missing PAN of deductee in the TDS return. The assessee in respect of thereto made a detailed reply. However, the Assessing Officer did not accept the explanation offered by the Counsel for the assessee and imposed a penalty of Rs. 30,70,60,000/- i.e @ Rs. 10,000/- for missing/incorrect PAN of 30706 deductees. The assessee feeling aggrieved by the order of the Assessing Officer preferred an appeal to Ld. CIT(A) who after considering the submissions reduced the penalty to Rs. 30,000/-. Against this order, the revenue has filed the instant appeals.

5. Ld. CIT DR strongly relied upon the order of the Assessing Officer and submitted that section 272B of the Act is to be read in conjunction with section 139A(5B) of the Act. He submitted that non-mentioning of the PAN, made the deductor liable for penalty u/s 272B and such penalty is leviable on each default. On the contrary, Ld. AR of the assessee submitted that the tax at source is deductible u/s 194C of the Act in respect of the payment made. He submitted that section 194C(6) envisages that no tax is deductible in the event i.e PAN is furnished. He submitted that in this case the PAN was not made available by the deductee to the deductor assessee company. He submitted that even otherwise also in terms of Board's letter dated 05.08.2008 No. 275/24/2007-IT(B), the penalty u/s 272B is not leviable in respect of default. He submitted that it has been clarified therein that the penalty is linked to the person and not with the number of defaults in the PAN quoting in the e-TDS return. He also relied on the decision of the Hon'ble ITAT, Banglore Bench, rendered in ITA NO. 907,908 & 909 (Ind.) 2008 wherein it has been observed that there is no mechanism at the end of the assessee deductor to compel deductee to provide PAN.

6. We have heard the rival submissions perused material available on record. Ld. CIT(A) has restricted penalty to the tune of Rs. 30,000/- in all these appeal following the clarification embodied in the CBDT letter dated 05.08.2008. Since this fact is not disputed by the revenue that CBDT has issued a clarification whereby it has been clarified penalty u/s 272B of Rs. 10,000/- is linked to the person and not with the number of defaults.

7. Hence, we do not find any infirmity into orders of Ld. CIT(A), this ground of the appeal is rejected since the facts of the grounds are identical in all the three appeals i.e ITA No. 675, 676 & 677/Del/2012.

8. In the result, all these three appeals of the revenue are dismissed.

Order pronounced in the Open Court on 14.09.2012.