

# Tax Review/Taxation

## Daily Alert Services

Huzaima & Ikram  
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Kind regards

**Mrs. Huzaima Bukhari**

*Editor*

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## Revitalizing the justice system

by

*Huzaima Bukhari & Dr. Ikramul Haq*

Our existing justice system is hopelessly outdated, painfully ineffective and marred with inefficiency and inordinate delays. It needs complete restructuring and modernization but at the same time elimination of causes of litigation should be our top priority. It needs determination, vision and agenda. Unfortunately to make matters worse, our political leadership has neither desire nor vision for providing socio-economic justice. The society as it exists will remain prone to excessive litigation. The new courts and increased number of judges is no answer to the prevailing malady. The judiciary and legal fraternity has a vested interest in increased number of litigations. They will never support an agenda for reduction in litigation. Faced with this dilemma, the best one can expect is at least effective operational capacity of the existing judicial system that can be achieved by employing better human resource and application of latest technology.

In recent years, the establishment of e-Courts in many countries have revolutionised the process of dispensation of justice. In Pakistan, Lahore High Court started use of information technology (IT) as early as in April, 1991 when a Computer Cell was inaugurated—this was the first ever use of modern technology in any judicial department in Pakistan. Since then, substantial progress has been seen in all courts in the use of IT tools for swift disposal of cases and curtailing the back-log. At the moment application of IT is to the extent of displaying cause-lists on websites of Supreme Court and High Courts, providing vital information related to judiciary and judicial process as well as reporting of important cases. However, the goal of accelerating disposal of cases through e-Courts and mobile e-Benches is still a dream.

The Indian Supreme Court started e-Courts project in 2005 aimed at computerizing all courts including *taluk* (local) courts. The project during the last eight years has shown some success. In Pakistan, National Judiciary Automation Committee (NJAC) since 2010 has taken many good initiatives towards computerization of processes. Both India and Pakistan are just concentrating on automating the processes, which is no doubt good work. However, the real need is that of establishing e-Courts and e-Benches along with facility to record statements of witnesses through video conferences, filing papers online, and conducting hearings using IT technology which alone can help in accelerating the process of speedy disposal of cases and making it cost-effective. In these areas, the western countries are far ahead while all South Asian states are still lagging behind,

In Pakistan, for establishing e-Benches, a beginning can be made from tax appellate apparatus that can be treated as a pilot project. The establishment of e-Benches can reduce pendency of tax appeals and save

substantial amount of taxpayers' money needed for setting up physical offices at different places. The establishment of e-Benches can definitely help in delivering justice at the litigants' door step. Presently, pendency of appeals in Tax Tribunal is over 30,000. If a bench is not functioning in a particular place, say in Multan, in case of an emergency for stay of recovery, the taxpayer is compelled to file an application in Lahore and bear the cost of travelling, boarding, lodging etc. For those in remote areas, situated far away from the nearest available Tribunal bench, it's both costly and time consuming.

The working of e-Bench of Appellate Tribunal Inland Revenue and Customs Appellate Tribunal would help taxpayers, tax consultants and tax administration. For example: appeals at Faisalabad, Multan, Sialkot and Gujranwala can be heard at e-Bench of Tribunal at Lahore. The consultants and departmental representatives at these places could visit the nearest tax office and present their case. Members sitting at Lahore can hear the case through video conferencing and pronounce their judgment. Establishment of e-Benches can be extended to all cities of Pakistan where tax offices exist but the Tribunal has no establishment.

Income-tax Appellate Tribunal, established on 25th January, 1941, after independence, retained by India and Pakistan as such, except that we changed the nomenclature to Appellate Tribunal Inland Revenue (ATIR) on 28 October 2009 through a Presidential Ordinance in the wake of amalgamation of income tax and sales tax into one unified group. The Tribunal, has already completed 72 years of its existence, is considered as mother of all Tribunals. In Pakistan it has permanent seats at Lahore, Islamabad, Peshawar and Karachi. In India, it has 27 stations and 63 benches. Since Customs and Inland Revenue Tribunals deal with federal taxes, these should be merged and upgraded as National Tax Court, working directly under the Supreme Court. This would relieve High Courts of undue workload of tax cases. Two-tier tax appellate system—as is the case with Federal Service Tribunal—will ensure speedy disposal of cases involving state revenues.

There is not only a dire need to convert existing Tax Tribunals into National Tax Court, but also transform them into e-Tribunals using modern technology. In India, an initiative in this direction has already been taken. The author of this initiative very aptly observed: "what was in the realm of fantasy till yesterday is now in the realm of reality thanks to the forward-looking approach adopted by the Tribunal".

The Tax Tribunals in Pakistan are grappling with the problems of paucity of Members and the increasing case load. It is time that Ministry of Law initiates setting up E-Benches to solve the problem. This would help clear the pendency of cases and bring justice to the taxpayers' doorstep. If the concept is successful, it can be extended to the High Courts and the Supreme Court. This can be the best initiative to revamp the tax justice system in Pakistan—the only prerequisite is willingness

on the part of Ministry of Law & Justice to replace the outdated set up with modern apparatus for the benefit of people.

The federal Law Secretary should immediately consult Chairmen of Tax Tribunals and their Members to take concrete measures to establish e-Tribunal for better administration of justice. For this purpose an interactive meeting should be held between the Chairmen of Tax Tribunals, their Members, representatives of tax bars and Federal Board of Revenue (FBR). They should constitute special committees to give proposals as to how the concept of e-Tribunal could immensely benefit the taxpayers, tax administration and tax consultants.

In Pakistan, setting up e-Benches of Tax Tribunals will not require substantial spending as existing facilities in Customs Houses, Large Taxpayers Units (LTUs) and Regional Tax Offices (RTOs) can be utilised. This would enable the consultants to represent the matter from their own city. This, apart from facilitating taxpayers and tax consultants, would reduce the pendency of cases, save substantial capital and recurring expenditure of the government which can be used for more productive purposes. Above all, there would be complete transparency in justice delivery system. Recording of the proceedings would eliminate any chance of malpractice or allegation of miscarriage of justice.

In many countries, there is an even more exciting initiative called e-Mobile Court that is a specially designed vehicle having facility of e-Library, with all modern technology and as soon as the hearing is over, judgment is delivered to both the parties. This brings transparency and eliminates delay in the justice delivery system. If the concept of e-Mobile Court is implemented, justice will be at the doorstep of every citizen in Pakistan. Through this mechanism, litigants could get justice within six months of filing of petition or suit in the respective Tribunal/Court. In Pakistan, it can bring a revolution in the justice delivery system, provided the Supreme Court makes it a priority item on its agenda of judicial reform.

There is an urgent need to establish e-Tribunals, e-Courts, e-Benches and e-Mobile Courts. It is time that Chief Justice of Pakistan, Chief Justices of High Courts, Chairmen of all Tribunals, the Ministry of Law and Justice, professional bodies of lawyers, media and civil society join hands for reforming our existing outdated and pathetic judicial system.

### **France Faces EUR 5.5bn Revenue Gap in 2013**

French Budget Minister Bernard Cazeneuve has revealed that there will be a revenue shortfall in France this year of approximately EUR5.5bn (USD7.4bn), compared to the initial budget forecast.

In an interview on BFM-Television, Budget Minister Cazeneuve explained that the anticipated revenue shortfall for 2013 is due to the disappointing economic climate in France. The Government currently expects a shortfall of income this year from value-added tax (VAT) of around EUR1bn, from corporation tax – which is particularly sensitive to the economic climate – of EUR4bn, and from individual income tax of an estimated EUR500m, the Minister specified.

Insisting that the Government's budgetary targets for 2013 will nevertheless be met, and maintaining that there will be no fiscal "slippage," Budget Minister Cazeneuve made clear that the Government is tightly controlling its expenditure.

Furthermore, Cazeneuve pointed out that the Tax Administration has received over 6,500 voluntary declarations since June, from French taxpayers with assets held abroad electing to regularize their tax situation with the tax authorities. This figure exceeds the total number of declarations submitted over the course of the last three years, the Minister emphasized. The record rise since June is attributable to the Government's decision to temporarily reduce the penalties imposed, to encourage taxpayers to regularize their accounts before the Government's anti-tax evasion law enters into force.

The Government aims to recover EUR1bn in income tax and EUR1bn in corporation tax in 2014 from the fight against tax evasion, Cazeneuve said. The Government will therefore meet the EUR2bn recovery target provided for within the framework of the 2014 finance bill, he ended. – *Courtesy tax-news.com*

### **Germany's Schäuble Rejects European Wealth Tax**

German Finance Minister Wolfgang Schäuble has vehemently rejected the idea of introducing a wealth tax in Europe, to balance out existing inequalities between the rich and the poor.

In an interview with Bild, Finance Minister Schäuble made clear that the German Government is categorically opposed to the idea of wealth taxes. Insisting that recent remarks by the International

Monetary Fund (IMF) had simply been misunderstood, Finance Minister Schäuble maintained that the IMF had in no way intended to advocate that wealth taxes be introduced in Europe.

The IMF has itself already denied the allegations that it favors a tax on wealth, Schäuble explained, alluding to a statement issued by the body at the beginning of November. In the communiqué, the IMF insisted that comments made in its October Fiscal Monitor report had merely been “misconstrued” as an IMF policy proposal. The IMF appeared to suggest that advanced economies should raise taxes on the rich as part of efforts to reduce budget deficits and to tackle growing inequalities.

On the issue of ongoing negotiations between Chancellor Merkel’s ruling Christian Democratic Union (CDU) party and prospective Grand Coalition partner, the Social Democrats (SPD), German Finance Minister Schäuble firmly reiterated that the basic principles of no new debt and no tax rises are strictly non-negotiable.

Welcoming the successful completion of Ireland and Spain’s international programs, the German Minister pointed out that this achievement demonstrates that European policy of linking financial assistance to fiscal reforms is both “right and successful.”

Conceding that Greece faces much greater problems than all other crisis-ridden states, and acknowledging that the country will therefore take significantly longer before it stands on its own two feet again, Schäuble confirmed that an assessment will be made mid-2014, to determine whether or not an additional support package is required. Any future assistance program will nevertheless involve a much smaller amount, Schäuble underlined.

Concluding, Schäuble stressed that to ensure that Europe does not slip back into crisis, member states must consistently pursue their reform policies and return their public finances to order. Only a competitive Europe is “strong and immune” to future crises, Schäuble ended. – *Courtesy tax-news.com*

### **Survey Reveals Australian Businesses’ Tax Concerns**

Business taxes and government charges are seen as the biggest barrier to investment for Australia’s small businesses, according to a new survey.

The Australian Chamber of Commerce and Industry (ACCI) assessed conditions and confidence amongst 1,346 firms over the 2013

July to September, 2013 period. The resultant report, the Small Business Survey, claims that “small business investment growth has continued to be stifled by government red-tape burden, taxes, and charges.”

There has, however, been a “marked” improvement in small business expectations since September’s general election. A Liberal-led Coalition Government was elected on a platform that included pledges to repeal the controversial carbon and mining taxes.

ACCI ran a “Too Big to Ignore” campaign during the election, which stressed the need for lower taxes and a reduction in regulatory burdens. Campaign literature described the existing tax and finance systems as “impossible for the average small business to understand and comply with.”

“Too Big to Ignore” called for an ultimate phase-out of the payroll tax, along with the reintroduction of quarterly company and income tax collections.

Commenting on the survey results, ACCI’s Chief Economist Burchell Wilson said that they demonstrate “that general trading conditions continued to deteriorate for Australian small business in the September quarter, with all actual indicators, except labor costs, having been mired in contractionary territory since the global financial crisis and showing no convincing signs that they starting to bottom out. Despite the improvement in small business confidence, we are yet to see this translate into better actual outcomes and for that reason the lift in sentiment remains fragile and vulnerable to correction.”

Wilson was clear that “allowing the government to make Australia ‘open for business’ is a key to business confidence.” The “upswing in sentiment” has in part been driven by the Coalition’s promise to remove the “economically damaging carbon tax.” Legislation to this end was introduced earlier this month, but the Opposition Labor party remains against any repeal which is not accompanied by the introduction of an emissions trading system.

Wilson warned that “delaying the repeal of the carbon tax achieves little of practical purpose and will add to the frustration of industry. Sacrificing the international competitiveness of Australian business sends a negative message that will weigh on confidence in coming quarters.” – *Courtesy tax-news.com*

**The story of frequent flyers**

The Federal Board of Revenue (FBR) has a list of 53 Pakistanis who travelled abroad at least 300 times in just 15 months; One Naseem Ahmed performed the feat of getting aboard a plane and travelling to foreign lands 324 times in the same number of months.

Reading the news, I was thinking that maybe the FBR in collaboration with the PIA (the airline which only great people use) was announcing some kind of bonus scheme for these frequent flyers; instead, I learned that the FBR is only worried that none of these frequent flyers have ever paid taxes.

I was shocked not by the disclosure that these men who were so busy flying have not paid their taxes but at the dumbness of the FBR officials. Even the mind of a man like me who is not good in maths, realises that fifteen months mean 456 days and if the number of days are divided by 324 foreign flights that comes to even less than one and half day per foreign flight. But even that figure would be misleading as when a man leaves his country, he has to come back to make another foreign flight. That means Naseem Ahmed round trips from Pakistan and back consisted of 648 flights which means that he had to board a plane every sixteen hours during the last fifteen months.

Now such a busy man like Mr Naseem Ahmed simply doesn't have time to file his tax returns. It does not mean that he did not want to pay taxes. Besides it costs tens of millions of rupees to buy airfares for so many foreign flights and men who can spend so much money on air travel has to be very rich and a rich man's time as we know is very precious. He cannot waste it on boarding planes, getting off and then without having full sleep return by another flight and do that for fifteen months in a row. That is not why rich men earn so much money; If Mr Naseem has become a millionaire by travelling so frequently to foreign lands, the man who paid these tens of millions in airfare must be a billionaire. I shudder at the thought that what could happen to the officials who collected the flying record of these frequent flyers if it turns out the billionaires who were financing the air travels of the 53 frequent flyers were some bigwigs in the government themselves or were friends or relatives of the bigwigs in government. I, of course, don't know anyone of these 53 frequent flyers or their financiers? I am just guessing that usually when a person becomes so rich, it is impossible to force him to pay taxes under the threat of being sent

behind bars. Rich men are barred from being behind bars and that is how things are in Pakistan. No doubt that there were some individuals in the PPP government who could have borne the Haj expenses of all the 20 million Pakistanis; yet they got greed and had their cut in the great rip off of the hundred thousand Hajis, most of whom had spent their life savings for the holy journey.

Did anyone of them have as yet been forced to cough out the money they had stolen from the Hajis. You bet your last penny that, that the cough up did not happen! After all in this country we know that dozens of Pakistanis had stashed their illegally earned billions in foreign banks and what the previous government did was to make a law which made it legal for all such embezzlers to invest their illegal earnings in the stock exchange with no questions asked.

What if somebody makes a round trip from Pakistan by plane everyday and takes tens of millions of dollars everyday from here and instead of putting it in a foreign bank brings the money banks through banks to invests it in the stock market in Pakistan. There is no law to apprehend such individuals.

I would say that instead of going out in vain against the bosses of these frequent flyers; the FBR should announce a frequent flyer package for them and also announce a package for those frequently investing millions daily in the share business in Pakistan.

The FBR should encourage the rich in Pakistan to invest in their country and make the illegal, legal, for those who have become illegally rich for the simple reason that illegality has earned a legal status in this country. After all most of the powerful men and women in this country have joined the club of the illegally rich individuals, as they believe that if one can not stop them from becoming illegally rich, one should join them. – *Courtesy The Frontier Post*

### **IT returns sans wealth statement acceptable**

The Federal Board of Revenue (FBR) announced on Tuesday that income tax returns for the tax year 2013 will be accepted without wealth statement.

An official announcement said that the wealth statement exemption will be available in the cases of individuals whose last declared or assessed income or the declared income for the year was less than Rs1 million.

FBR's web portal is also accepting statements u/s 115(4) for the tax year 2013 without wealth statement of those individuals who fall under final tax regime (FTR) and have paid withholding tax less than Rs35,000, added the announcement.

The taxpayers are further advised to call the FBR's call centre which operates round the clock for further assistance in filing the returns and statements, the press release added. – *Courtesy Dawn*

### **New methodology evolved to trace undocumented persons: FBR informs Dar**

The Federal Board of Revenue has informed Finance Minister Ishaq Dar that a new methodology has been evolved to trace undocumented persons by obtaining their alternate addresses from National Database and Registration Authority (Nadra), whereas inspectors/auditors would physically visit their residential/business premises to ensure serving of notices to tax evaders, who refused to accept notices.

Sources told on Tuesday that Ishaq Dar visited the FBR Headquarters to discuss the current position of revenue collection, broadening of tax-base and future strategy to meet the assigned target of Rs 2,475 billion by the end of 2013-14. Dar directed the FBR that tax authorities should amicably resolve tax-related issues with the provinces. The FBR and provinces should sit together to resolve issue of input tax adjustment. The FBR and provinces, including Sindh Revenue Board (SRB) and Punjab Revenue Authority (PRA) should amicably discuss the draft Memorandum of Understanding (MoU) on the proposed mechanism for bilateral sales tax adjustment between federation and provinces. The Finance Minister also directed the FBR to take policy measures for checking illegal input tax adjustment during 2013-14.

FBR Chairman Tariq Bajwa and his team briefed the Finance Minister on revenue collection, audit of registered persons, broadening of tax-base and sales tax position. Senior Member Inland Revenue Policy, FBR Member Customs, FBR Member Inland Revenue (Operations) and FBR Member Taxpayers Audit gave separate presentations to the minister.

After a marathon meeting for four hours, the Finance Ministry and the FBR decided that the customs offices at ports would work on Saturdays till clearance of backlog of imported consignments. To

facilitate filing of returns, the Regional Tax Offices (RTOs) would remain open on Saturdays of November 2013.

It has been informed that around 36,000 notices have been issued to the unregistered persons till date. The FBR has decided to obtain alternate addresses of the unregistered persons from Nadra in cases where the notices remained un-served. The FBR will use all addresses, ie, current, permanent and addresses on electoral rolls for expanding the tax net.

In cases where notices remained un-served at the declared addresses, the FBR will use other addresses available with Nadra. There are cases where incomplete addresses are available with the tax department. The Board would use other addresses to serve notices to such persons. In cases where the tax evaders refused to accept notices of the FBR, the tax department would dully follow the procedure of serving notices under Income Tax Ordinance 2001. In this regard, the tax officers would physically go and personally serve the notices at the available address. If the notice still remains un-served the tax officer would affix the notice outside the residential or business premises of the tax evader.

Sources said that the Finance Minister directed the FBR to ensure achievement of the assigned revenue collection target of Rs 2,475 billion for 2013-14. However, the budgetary target of Rs 2,475 billion would not be revised downward in remaining period of current fiscal year.

Tax authorities have informed that Rs 2,475 billion is a challenging revenue collection target for 2013-14. The FBR has to generate an additional amount of Rs 535 billion in 2013-14 as compared to 2012-13 which is a very huge amount. Tax machinery will make all-out efforts to achieve the assigned revenue collection target for 2013-14. It would be a challenge to fetch additional revenues of Rs 535 billion in order to display the desired target set for the current fiscal year which would require a growth of 28 percent against 2.5 to 3 percent in last financial year. In order to achieve the ambitious revenue collection target the FBR will generate around Rs 200 billion from new taxation measures taken in budget (2013-14), sources added.

A press release issued by Ministry of Finance on Tuesday said that the Finance Minister, Senator Ishaq Dar has directed that the offices of Customs and relating banks in Karachi shall remain open on Saturday with immediate effect to clear deadlock and stuck up containers due to recent strike of transporters leading to

non clearance of thousands of containers by customs and Ports Authorities.

The Finance Minister took this decision while presiding a high-level meeting to review the performance of the Federal Board of Revenue which he visited today in the afternoon. The Finance Minister took this decision in view of the situation arising as perishable goods DFP, urea, onions and other exports and imports goods were stuck-up which was affecting the business community as well as the common man.

The Finance Minister also directed that the FBR to detail field Inland Revenue Officers and facilitate taxpayers for filing of their returns. In this connection all field Inland Revenue Officer would now be available on Saturday in their offices to assist and facilitate the taxpayers in filing of their returns. The Inland Revenue Officers shall attend offices on all Saturdays and perform their duties as normal till midnight November 30, 2013.

The Finance Minister was told that more than 212 kiosks have also been establish throughout the country at important places including business centers to assist and facilitate the taxpayer for filing of their return. The meeting which lasted for over 4 hours also discussed various proposals to encourage and facilitate taxpayers as well as to provide comfort to the business community.

The Finance Minister directed the officers of FBR to take necessary steps for collection of revenue and achieve the targets set by the Government as it is critical for the fiscal stability of the country. FBR Chairman Tariq Bajwa briefed the Finance Minister on the overall efforts which are being made by the FBR to assist and facilitate the taxpayers, business community as well as an overview of the tax collection of the Board.

The Finance Minister appreciated the efforts being made by FBR for achieving the targets set by the government and assured the senior officials of the FBR that the government would provide them necessary facilities and support for the purpose. The Finance Minister was also briefed separately on issues relating to Customs, Sales Tax, Income Tax and Federal Excise Duty which were discussed threadbare. The meeting was attended by the Members of FBR and senior officers of Ministry of Finance, the press release added. – *Courtesy Business Recorder*

**Non-filers of two ST returns will be excluded from ATL**

On relaxing a harsh condition for sales tax registered persons, the Federal Board of Revenue has decided that only those taxpayers would be taken out of Active Taxpayer List (ATL), who will not be able to file two consecutive sales tax returns. In this regard, the FBR has issued a Sales Tax General Order 46 of 2013 here on Tuesday.

An official said that the FBR has facilitated the sales tax registered persons through amendment to the procedure for maintenance/upgradation of Active Taxpayers List in the FBR's database. Now, only those taxpayers would be taken out of ATL who fails to file two consecutive sales tax returns. Initially, the condition was restricted to one return to ensure compliance. The non-filer of one sales tax return to be excluded from the ATL and now the condition has been relaxed for the business and trade.

Following is the text of the STGO issued here on Tuesday: The Federal Board of Revenue is pleased to direct that in its Sales Tax General Order No 34/2010 dated 16.9.2010, the following further amendments shall be made, namely: In para 2, in clause (b), in sub-section (ii) and (v), after the words "by the end of the calendar month in which the due date falls" the words "by the end of calendar month following the month in which the due date falls" shall be substituted, the FBR added. – *Courtesy Business Recorder*

2013 TRI 1864 (Trib. Ind.)

**INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI “C” BENCH, MUMBAI**

**D. Manmohan, Vice President and**  
**Rajendra Singh, Accountant Member**

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**FACTS/HELD**

**Failure to comply with the criterion necessary to represent the matter before the Tribunal, in time, renders appeal liable for dismissal**

1. The assessee filed an appeal before the Tribunal but repeatedly sought adjournments. He also did not file a letter of authority authorizing his CAs to appear in the appeal. The Tribunal dismissed the appeal on the ground that the assessee is not interested in pursuing the appeal. Thereafter, the assessee filed a Miscellaneous Application seeking restoration of the appeal. The Tribunal restored the appeal even though no power of attorney was filed even at this stage. Even after recalling the appeals the assessee continued to seek adjournments on one pretext or the other. The Tribunal dismissed the appeals and also awarded costs. The assessee again filed a Miscellaneous Application seeking restoration of the appeal. At the hearing of the MA, the power of attorney of the Counsel was not filed. HELD by the Tribunal dismissing the MA:
  - (i) It deserves to be noticed here that in Mumbai, despite repeatedly pointing out in each and every case, learned counsels rarely follow the practice of filing the power of attorney and many Members of the Tribunal, who do not believe it be their obligation to verify the availability of power of attorney, may not point out the same to the counsels and it results in counsels appearing without filing a power of attorney. There are equal number of occasions where several other Members, including Members of this Bench, have had occasion to point out that there was no power of attorney and counsels filed xerox copies or take further time to file power of attorney. In fact some would go to the extent of stating that they assumed that the

power of attorney is on record and when we verify the file (though it is their duty to file power of attorney) and inform the counsel that there is no power of attorney then fresh power of attorney is filed. Particularly in the bench which is presided over by the Vice President, the registry notes on the file that the power of attorney of a person, who is representing the matter, is not on record and then the power of attorney is filed, notwithstanding the fact that before filing the power of attorney the same counsel or Chartered Accountant must have already taken adjournments on several occasions.

- (ii) On facts, there is no sufficient cause for restoration of the appeal under the proviso to Rule 24. The power of attorney has not been filed. The appeals were dismissed twice as adjournments were sought on spurious grounds. The assessee and his counsels have done lackluster attempt to represent the matters by not fulfilling all the criterion necessary to represent the matter before the Tribunal, in time.

*Application dismissed.*

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**M.A. No. 721/Mum/2012 arising out I.T.A. No. 7149/Mum/2008 (Assessment Year : 1988-89) and M.A. No. 722/Mum/2012 arising out I.T.A. No. 7150/Mum/2008 (Assessment Year : 1990-91).**

**Heard on: 13<sup>th</sup> September, 2013.**

**Decided on: 20<sup>th</sup> September, 2013.**

**Present at hearing: M. Subramanian, for Appellant. O.P. Singh, for Respondent.**

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## **JUDGMENT**

*Per D. Manmohan:– (Vice President)*

By these Miscellaneous Applications the assessee seeks recall of the order passed by the ITAT “C” Bench Mumbai in ITA No. 7149 85 7150/Mum/2008. Admittedly the appeals were filed on 3.10.2008 and were adjourned on number of occasions at the request of the authorised representative of the assessee. As pointed out by learned Departmental Representative, assessee appears to have taken help of M/s. Shah & Sanghvi, CAs to file the appeals before the Appellate Tribunal, as could be seen from the covering letter filed alongwith Form No. 36 indicating that they were authorised to file the appeals on behalf the assessee. However, Shah & Sanghvi, CAs have not filed power of attorney. Though number of adjournments were taken, assessee having not appeared and

kept on seeking adjournments on some ground or the other, appeals were dismissed on the ground that the assessee is not interested in pursuing the appeals. Upon receipt of the order dated 24.2.2010 the assessee moved Miscellaneous Applications wherein it was contended that the applicant's representative could not attend the hearing as the train he was travelling got delayed which resulted in non-appearance. It was submitted that Mr. M. Subramanian, Advocate was also sick. However, no power of attorney was filed even at this stage either of CAs., M/s. Shah & Sanghvi or Mr. M. Subramanian, Advocate. The Bench appeared to have been under the impression that the counsel must have followed procedure of filing power of attorney before making his appearance and hence it recalled its earlier order.

2. Even after recalling the appeals the assessee continued to seek adjournments on one pretext or the other. At this juncture, the Bench had come to a conclusion that the assessee is not serious in pursuing the appeals and seeking adjournment on spurious grounds. Vide order sheet dated 12.4.2011 the Bench awarded cost of Rs. 1000/- for granting adjournment as the reason given by the assessee is not convincing. Even thereafter the assessee sought number of adjournments. Finally when the matter was listed for hearing on 29.11.2011 the Bench noticed that every time adjournment was taken on the ground that the Accountant is out of station but none appeared on behalf of the assessee and even Vakalatnama of the assessee's counsel is not on record; therefore it was concluded that the assessee is not interested in pursuing the appeals diligently. By applying the decision of Hon'ble Jurisdictional High Court in the case of *M/s. Chemipol vs. UOI 85 Ors.* (in Central Excise Appeal No. 62 of 2009 vide order dated 17.9.2009), the Bench dismissed the appeals; Since the assessee wasted precious time of the Court by seeking adjournments, the Bench directed the appellant to pay cost of Rs. 2,000/- per appeal.

3.3 Aggrieved by the order dated 29.11.2011, present Miscellaneous Applications were filed by the assessee. Though these present Miscellaneous Applications were filed on 30.11.2012, Shri M. Subramanian, Advocate filed his power of attorney duly signed on 26.4.2013. When the matter was first listed for hearing he submitted that the very fact that he appeared in the first round of litigation i.e. in M.A. No. 284 & 285/Mum/2010 and nobody raised an objection, he must have filed his power of attorney. When called upon to furnish the proof of the same, learned counsel could not furnish any evidence.

4. It deserves to be noticed here that in Mumbai, despite repeatedly pointing out in each and every case, learned counsels rarely follow the practice of filing the power of attorney and many Members of the Tribunal, who do not believe it be their obligation to verify the availability of power of attorney, may not point out the same to the counsels and it results in counsels appearing without filing a power of

attorney. There are equal number of occasions where several other Members, including Members of this Bench, have had occasion to point out that there was no power of attorney and counsels filed xerox copies or take further time to file power of attorney. In fact some would go to the extent of stating that they assumed that the power of attorney is on record and when we verify the file (though it is their duty to file power of attorney) and inform the counsel that there is no power of attorney then fresh power of attorney is filed. Particularly in the bench which is presided over by the Vice President, the registry notes on the file that the power of attorney of a person, who is representing the matter, is not on record and then the power of attorney is filed, notwithstanding the fact that before filing the power of attorney the same counsel or Chartered Accountant must have already taken adjournments on several occasions.

5. Reverting to the case on hand, the record clearly indicates that the power of attorney was not filed earlier and there is no proof whatsoever to show that Shri Thankanchan or M/s. Shah & Sanghvi, CAs have filed power of attorney/authorisation memo. Learned Counsel for the assessee Mr. M. Subramanian filed an Affidavit of the Accountant of the assessee to submit that he was on leave (on pilgrimage to Kerala) and hence he could not present himself before Hon'ble Court on 29.11.2011 resulting in disposal of the matter ex-parte, qua the assessee.

6.3 Learned Departmental Representative filed written submissions dated 6.9.2013 wherein it was submitted that the assessee had taken number of adjournments on spurious grounds which is evident from the fact that the Bench has already awarded cost and now a new plea is raised that Shri P.S. Thankanchan was representing the assessee whereas, even the assessment record does not have any evidence to show that he was 'authorized representative' as per section 288(2) of the Income Tax Act. It was also pointed out that even if he has been engaged, no such authorization has been filed before the Tribunal. Further no evidence with regard to leave or visit to Kerala by Shri P.S. Thankanchan was made available. It was also pointed out that though the applicant has emphasised that presence of applicant's regular representative was very essential to represent the case, the record suggests that the assessee's authorised representative was M/s. Shah & Sanghvi, CAs who have also not filed power of attorney and hence taking a new plea, that presence of Shri P.S. Thankanchan is necessary, does not deserve to be accepted. Learned Departmental Representative thus strongly submitted that the Bench had correctly concluded that the assessee was not interested in prosecuting the matter as otherwise either the assessee would have appeared in person or authorized representatives would have filed their power of attorney and ensured appearance from time to time.

7. Joining the issue learned counsel for the assessee submitted that the assessee dutifully sought adjournments from time to time since he was interested in pursuing the appeals. It was also submitted that the

assessee paid costs, as awarded by the Bench, on two occasions and this also indicates that the assessee is interested in prosecuting the appeals. It was thus contended that there was a *bonafide* reason for non-appearance on the date fixed for hearing.

8. We have carefully considered the rival submissions and perused the record. Under proviso to Rule 24 of the Appellate Tribunal Rules the assessee has to show that there was sufficient cause for his non-appearance and only in the event of proving sufficient cause for non-appearance, ex-parte order passed by the Appellate Tribunal can be restored. It is, therefore, necessary to see as to whether reasons given by the assessee can be considered as sufficient cause for non-appearance. We have carefully gone through the submissions made by the counsel and find that the assessee could not prove sufficient cause for non-appearance on the date fixed for hearing. If Mr. Thankanchan/ Shah/ Subramanian claims to be the authorised representatives they ought to have filed their respective power of attorney/authorisation memo but no such authorisation memo was available on record. The appeals were dismissed twice and on few occasions it was brought to the notice of the party that adjournments were being sought on spurious grounds. It also deserves to be noticed that assessee engaged M/s. Shah & Sanghvi, CAs which is evident from the fact that the said CAs have filed these appeals, alongwith their covering letter wherein it was stated that they were requested to file appeals on behalf of the assessee, which implies that they were the authorised representatives but even M/s. Shah & Sanghvi did not file the power of attorney. Though Mr. M. Subramanian appeared on number of occasions and was also successful in getting earlier ex-parte order recalled, fact remains that the power of attorney was not filed and it was filed only when it was verified and pointed out during the course of hearing of the present Miscellaneous Applications which also indicates that the assessee as well as his counsels have done lackluster attempt to represent the matters by not fulfilling all the criterion necessary to represent the matter before the Tribunal, in time. Under these circumstances, we are of the firm opinion that explanation of the assessee for non-appearance does not deserve to be accepted. We therefore dismiss the present Miscellaneous Applications.

Order pronounced on 20<sup>th</sup> Day of September, 2013.

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