Tax Review/Taxation

Daily Alert Service

Huzaima & Ikram
December 27, 2013

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

For subscription, please visit our website or contact offices mentioned below.

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

This issue contains:

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

Registration of a foreign company in Pakistan

by
*Zafar Azeem**

This write-up provides guidance for registration and operating of a foreign company in Pakistan within the framework of Pakistan's Laws. [1] The information given here be read along with the provisions of Companies Ordinance, 1984, (hereinafter referred to as Ordinance) and wherever one is unsure of its understanding seek a legal advice.

Overview

The ordinance defines a foreign company as a company incorporated or formed outside Pakistan and which intends to establish a place of business in Pakistan or which has established a place of business in Pakistan and continues to have a place of business in Pakistan.[2]

A foreign company may carry on business in Pakistan by incorporating itself as a local company or by registering itself as a foreign branch under the Ordinance.[3]

The Company's Ordinance lays down certain duties and obligations for a foreign company such as:

(i) Registration of the company in accordance with provisions of the Ordinance;

(ii) Specifying particulars of persons, residing in Pakistan and authorised to accept service on behalf of the foreign company along with authority letter;

(iii) Providing the details of the place of business in Pakistan;[4]

(iv) Updating the Registrar about the information required under the law;

---

* The writer is an advocate and is currently working as an associate with Azim-ud-Din Law Associates.

1 See Sections 450-464 of the Companies Ordinance, 1984.

2 See Section 450 of the Companies Ordinance, 1984.

3 See requirements of registration in Section 451 of the Company Ordinance, 1984: A branch is merely an extension of the parent company; it does not have its own shares or its own board of directors.

4 A place of business includes branch, management, share transfer or registration office, factory, mine or fixed place of business but does not include an agency unless the agent exercises a general authority to negotiate and conclude contract or maintains stock of merchandise on behalf of the company.
Following are the exceptions: (i). Company shall not be deemed to have an established place of business in Pakistan merely because it carries on business dealings in Pakistan through a bona fide broker or general commission agent acting in the ordinary course of his business. (ii). The fact that a company has a subsidiary which is incorporated, resident, or carrying on business in Pakistan, shall not of itself constitute the place of business of that subsidiary an established place of business of the company.

(v) Maintenance of accounts in accordance with the law; and

(vi) Informing the registrar for registration in case of cessation of business in Pakistan.[1]

Local registration requirements

A foreign company for its registration is required to deliver the following documents within 30 days of commencement of its business in Pakistan.[2]

(a) Copies of the charter, statute or memorandum and articles of the company, or instruments defining the constitution of the company, written in the English or Urdu languages, or a certified translation thereof in the English or Urdu language;[2]

(b) The address of the registered office of the company;

(c) List of the directors, chief executive and secretaries (if any) of the company;[2]

(d) Name, surname, father's name, present and former nationality, designation and full address in Pakistan of the principal officer of the company.[2]

(e) Names and surnames, father's name, the name of her husband or deceased husband (in case of a woman), present and former nationality, occupation and full addresses in Pakistan of the authorised persons who can accept, on behalf of the company, service of process and any notice or other document required to be served on the company together with his consent to do so; and[2]

(f) The full address of its principal place of business in Pakistan.[2]

Steps for registration

For a Foreign Company to register two steps are required, that is, seeking of the availability of company name, and submission of required documents.

Step 1

The first step in the process of registration of a Foreign Company is to seek availability of name of the proposed company from the registrar.[3] The name of the proposed company should not be:

Inappropriate Deceptive.

Designed to exploit or offend the religious susceptibilities of the people.

Identical or having close resemblance with already existing company.

Suggesting connection with any government or its organisation or any international organisation.

---

[1] 5. Section 451, Companies Ordinance 1984. The documents are required to be submitted to the registrar assigned the duties of registration.

[2] Id.

[3] Fees for seeking availability of company name through online processing is Rs 200 and for offline processing is Rs 500.

Step 2

After seeking availability of the company name, next step is submission of documentation, under the provisions of the Ordinance; following documents are required to be submitted to the appropriate authority.[1]

Certified copy of the charter, statute or Memorandum and Articles of the company.

Address of registered office or principal office of the company.

Particulars of directors, chief executive and secretary, if any, of the company.

Particulars of principal officer of the company in Pakistan.

Particulars of person(s) resident in Pakistan authorised to accept service on behalf of the foreign company along with the certified copy of the appointment order, authority letter of board of directors' resolution and consent of the principle officer.

Address of principal place(s) of business in Pakistan of the foreign company.[2]

An Authority letter in the name of authorised representative of the foreign company.

Fee challan showing the deposit of required fee in the government treasury.[3]

Permissions

A foreign company is required to obtain permission from the Board of Investment with a specific validity period for opening and maintaining of its branch or liaison office in Pakistan.[4]

Renewal or extension of the permission to open or maintain a branch or liaison office is also required to be obtained from the Board of Investment on the expiry of the validity period of the permission originally granted. Whenever such renewal or extension is granted, a copy must be furnished to the registrar concerned.[5]

Authorised local person for service of summons etc.

A foreign company is required to appoint one or more persons who are resident in Pakistan to be its agents in order to accept on its behalf service of process and notices required to be served on the company. Being a local agent for a foreign company the agent has to:

a) Continue being an authorised person until ceasing to be one;

---

[1] The appropriate authority for this purpose is the registrar of registration.

[2] For the purpose of ease see forms 38 to 43 prescribed under rules and the same are required to be filled.

[3] These documents are prescribed under the Rules. For fees consult Schedule 6 of the Ordinance.

[4] Copy of such permission letter is required to be furnished with the documents meant for registration.

[5] Id.

b) Be answerable for the doing of all acts, matters and things as are required to be done by the foreign company under the Ordinance.[1]

Where a default is made by a foreign company in complying with the provisions of the Ordinance, the company and its officers who are responsible knowingly and wilfully for such default including the agent are liable to fine and default penalty.[2]

Place of business in Pakistan

Place of business in Pakistan includes a branch, management office, factory, mine or other fixed place of business.[3]

Informing the Changes:

In case of change or alteration the registrar of registration is to be notified of the particulars of change. These may include:–[4]

a) The charter, statutes, memorandum or articles of the parent company or other instrument lodged with the Registrar;

b) The identities or particulars of the directors of the parent company;[5]

c) The identities or particulars of agents;[5]

d) The registered office address of the Pakistan branch and in its place of incorporation or origin of the parent company;[5]

e) Parent company name;[5]

f) Powers of any directors resident in Pakistan who are on the board of parent company;[6]

g) Share capital.[5]

Accounts

A foreign company is required to file each year the following information:[7]

(i) List of Pakistani members.

(ii) Debenture holders.

(iii) Place of business.

(iv) Balance sheet.

(v) Balance sheet of the company relating to its country of incorporation.

(vi) Accounts required for being a public company.

---

[1] See the provision of Section 458 of the Ordinance. Such authorised person can only cease being an agent after the expiration of a period specified in the Registrar's notice.

[2] See the provision of Section 459 of the Ordinance.

[3] See Sub-Section (C) of Section 460 of the Ordinance.

[4] See the provisions of Sections 37 to 41 read with Section 457 of the Ordinance.

[5] Id.

[6] See the provisions of Section 456 of the Ordinance.

[7] See the provisions of Section 453 of the Ordinance.

Audited statement showing the assets and liabilities arising out of the company's operations in Pakistan and a duly audited profit and loss account are to be lodged with the registrar.[1]

Where it is not possible to meet the deadlines, extension in time may be sought from the registra.[1]

Cessation of business

Where a foreign company ceases to have place of business in Pakistan, it is required to give notice[2] to the registrar concerned at least 30 days before it intends to cease to have any place of business in Pakistan[3] and to publish a notice of such intention at least in two daily newspapers circulating in the Province(s) in which such place(s) of business is situated.

All obligations of the company to deliver documents to the registrar concerned ceases from the date of such intention to cease the place of business in Pakistan, except that the foreign company does not have any other place of business in Pakistan.

---

[1] Id.
[2] See the provisions of Section 458 of the Ordinance.
[3] Notice is to be given on prescribed Form 46.

Switzerland

Swiss industry seeks "Institutional Development" of EU accords

Swiss business federation Economiesuisse has underlined the need for the further institutional development of bilateral agreements between Switzerland and the European Union (EU).

While making clear that this is a prerequisite for improving access for Swiss industry to the EU Single Market, the federation nevertheless warned that the Confederation must at the same time preserve its autonomy in certain key areas of economic policy, during the negotiations.

Alluding to the fact that 60 percent of Swiss exports flow to the EU, Economiesuisse emphasized that for Switzerland as an export nation, integration into the European Single Market is therefore very important. However, since 2008, talks on improving mutual market access have effectively been blocked, the federation noted.

This year, Switzerland and the EU have for the first time been able to draw up common solutions to the problem, and have recently adopted a corresponding negotiating position, the group explained.

Underlining its support for the negotiating stance of the Swiss Government, Economiesuisse nevertheless put forward its own recommendations. Economiesuisse stressed that above all Switzerland's autonomy, in particular its economic relations with third states and its tax and labor laws, must be maintained. Furthermore, the federation rejected the idea of direct monitoring by the European Commission.

Arbitration must be based on the law of the bilateral agreements in place, the body said. Although the principle of a uniform adoption of EU law in the bilateral treaties makes sense in most cases, the recognition of equivalent regulations in Switzerland is indicated in a number of areas, it said.

Concluding, Economiesuisse underscored that there are no advantages for Switzerland in waiting: current bilateral accords must swiftly be aligned with legislative developments in the EU, otherwise integration into the EU Single Market will only get progressively harder, the federation ended. – *Courtesy tax-news.com*

United States

Tax evasion hits developing countries

Illicit outflows from developing countries have increased by 10.2 percent a year since 2002, new research has claimed.

US-based research and advocacy organization Global Financial Integrity (GFI) has released its annual update on the funds flowing out of developing economies as a result of crime, corruption, and tax evasion. Around USD946.7bn was lost in this way in 2011, up 13.7 percent on the year before. In 2002, this figure stood at just USD270.3bn.

GFI Junior Economist Brian LeBlanc, one of the authors of the study, warned of the consequences. The money "haemorrhaged" from developing economies "could have been invested in local businesses, healthcare, education, or infrastructure."

He warned that "without concrete action, the drain on the developing world is only going to grow larger."

Among the policy solutions suggested in the report is that multinational corporations report, on a country-by-country basis, their sales, profits, and taxes paid. Governments are urged to press ahead with the automatic cross-border exchange of tax information, and reform customs and trade protocols to detect and curtail trade mis-invoicing.

Establishing the beneficial ownership of companies, foundations and trusts, is also regarded as vital. GIF recommends that governments demand that information on the true, human owner of all such entities be disclosed upon formation, and made available to law enforcement agencies, if not to the public.

Reflecting on the findings, GIF President Raymond Baker said that the study "underscores how important it is to quickly extend automatic tax information exchange to non-G20 developing countries. The G20 should include developing countries in the committee tasked with drafting the automatic exchange implementation treaty, ensuring that its terms are both beneficial to and implementable by developing countries." – *Courtesy tax-news.com*

Spain

Montoro confirms future Spanish tax cuts for lower incomes

In a recent interview with the Expansión newspaper, the Spanish Finance Minister Cristobal Montoro has disclosed that the Government intends to cut individual income taxation (IRPF) for those on lower incomes over the next three years, while higher-income taxpayers will continue to pay more.

Montoro also indicated that, while the IRPF reduction will be a key policy within future Spanish tax reform, the Government's main aim will also be to reduce the country's fiscal deficit. To do that, he said, it would be necessary to correct the shortcomings of the tax system, particularly in the insufficient amount of taxes collected.

However, while expanding the tax base and raising the tax take from companies, he confirmed that the Government would also look to provide further tax incentives for those businesses investing in productive capacity. Montoro has already stated that future fiscal reform should go as far as possible in encouraging economic growth, which would itself help to generate additional tax revenues.

It has been argued that economic conditions in Spain are now significantly different, even from a few months ago. With economic growth, even if only 1 percent, now forecast for 2014, it is felt that the time will be right for an announcement of tax reforms in mid-2014, which would enter into force in 2015.

While it is being said that tax burdens must be lowered after the large increases since 2012, the Government has also pledged that value-added tax is to remain fundamentally unchanged next year and in 2015. – *Courtesy tax-news.com*

FBR to issue 400 taxpayer privilege cards in March

The Federal Board of Revenue (FBR) will issue around 400 privilege cards to top tax paying individuals and companies after completion of the income tax returns filing process that will be completed by the end of February 2014, a senior FBR official said on Wednesday.

"The privilege cards will be issued in March 2014 to 100 top taxpayers in four different categories," Shahid Hussain Asad, Member Inland Revenue (Policy), told The News.

The distribution of privilege cards is a part of the scheme announced by the prime minister to incentivise the taxpayers and promote tax culture in the country.

Under the scheme, top 100 taxpayers will be issued privilege / recognition cards falling in the categories included CEOs of companies; salaried individuals; non-salaried individuals; and member of association's of persons (AOPs).

The top taxpayers will avail of the benefits of the card, including use of VIP lounges at airports, fast track clearance and immigration counters and issuance of gratis passports.

The benefits of the cards also included increase in the baggage allowance from $500 to $2,500, annual dinner with the prime minister at excellence award ceremonies, invitation for ceremonies for March 23, August 14 and other state banquets.

The member said that the government will also confer with excellence awards to top 10 taxpayers in each category.

Asad said that the FBR had discussed with all other government departments for the issuance of the privilege cards, including immigration department, civil aviation and passport issuing authorities.

Before issuing the privilege cards, the revenue body had also launched different incentive / amnesty schemes for the taxpayers for ensuring income tax returns filing for the tax year 2013 and broadening the tax base.

In line with the announcement of the prime minister on November 28, the FBR issued a statutory regulator order (SRO) to launch the scheme, including incentives to promote investment, incentives to dormant NTN holders and incentives to new taxpayers.

Prior to this, the FBR had also announced immunity from the audit for existing taxpayers for ensuring improved outcome in the income tax returns filing.

Presently, the total NTN holders in the country are around 3.6 million, of which only 800,000 taxpayers filed their income tax returns by December 16. The filing of income tax returns for corporate entities is December 31 that will increase the total number.

Furthermore, the incentives to the taxpayers will also help in big number of returns filing by February end.

"The NTN holders and persons having taxable income but not on the tax roll have been given a chance to avail of the opportunity," Asad said, adding that otherwise the FBR had decided not to give further relaxation after cutoff date of incentives package and would initiate legal action against non-compliant taxpayers and tax evaders. – *Courtesy International The News*

Family petitions: PHC issues stay order against income support levy tax

A stay order was issued by the Peshawar High Court (PHC) on Thursday against the collection of income support levy taken by the Federal Board of Revenue (FBR).

The court also asked the board for a full report on it. The 0.5% tax is imposed on income of individuals who earn more than one million rupees a month.

A single-member bench of Justice Nisar Hussain Khan was informed by the petitioner's counsel, Advocate Rehman Shah, that his clients, Salim, Humayun Saifullah and their family, were paying regular tax to the FBR and had their own National Tax Numbers. Shah added the court, however, had issued stay orders in other family member's petitions.

The advocate claimed his clients were paying their taxes, but this year, under the Income Support Levy Act of 2013, they were being asked to pay 0.5% more.

Justice Khan said the stay order issued on the other petitions expired on December 16 and the advocate should have reached the court earlier. After the expiration, the petitioner is liable to penalty.

Advocate Shah replied that if the stay order was not extended, then his client would have to pay a 16% surcharge in addition to the levy tax. He added the amount was too huge so the stay order should be extended.

After hearing the arguments, the judge issued a stay order till January 7 and stopped the FBR from collecting the levy tax from the Saifullah family.

Early retirement

In a separate case, Justice Khan also sought a report from the Ministry of State and Frontier Regions and Khyber Agency's political agent over the forced retirement of a naib subidar. This stopped officials from taking any further action against the petitioner.

Advocate Aminur Rehman informed the court his client Amjid Ali had been serving as a naib subidar in the agency and was 39 years old. The retirement requirement age for the post is 55. Rehman claimed that Ali had received an order from the political administration to retire from December 31. He added the administration had told his client he was temporarily promoted to the post of naib subidar from that of a hawaldar. Rehman claimed that even if his client was being forced to retire from that, then the retirement requirement age for a hawaldar was 43.

The court heard the preliminary arguments, accepted a writ petition and sought reports from the political agent and ministry. – *Courtesy The Express Tribune*

Plan to phase out tax relief finalised: SROs list readied

The government Thursday finalised the list of Statutory Regulatory Orders (SROs) and exemptions granted through federal tax laws to curtail the existing cost of exemptions in income tax, sales tax, customs and federal excise duty (FED) from over Rs 450-500 billion to a reasonably low level in 2013-14.

Sources told The Finance Minister Ishaq Dar chaired a high-level meeting at the FBR House to review concessionary regime granted through SROs, notifications and fiscal laws of direct and indirect taxes. The FBR Chairman, Secretary Finance, Secretary Commerce and senior officials of National Tariff Commission (NTC) and ministries gave their input on the concessionary regime during the detailed meeting. The final plan would be presented before Prime Minister Nawaz Sharif for execution to withdraw exemptions in a phase-wise manner.

Top officials of Finance Ministry and the FBR jointly reviewed the impact of concessionary SROs in the light of specific suggestions made by officials of Commerce Ministry and NTC.

Sources said that the cost of sales tax exemption is around Rs 242 billion, customs duty nearly Rs 161 billion and if cost of income tax exemptions comes to over and above Rs 50 billion, total cost of exemptions cross Rs 500 billion. So far, the estimated cost of income tax exemptions stood at over Rs 31 billion. Similarly, exemptions and concessions of the excise duty for specific sector is also causing revenue loss. The actual cost of exemptions is much higher as compared to the tax expenditures of Rs 239.5 billion mentioned in the Economic Survey (2012-13).

This huge cost of exemptions to the tune of Rs 450-500 billion can only be reduced by withdrawing sales tax and customs duty exemptions where cost of exemptions is Rs 242 billion and Rs 161 billion respectively.

The committee on concessionary regime reviewed the SROs, Sixth Schedule of the Sales Tax Act 1990 and Second Schedule of the Income Tax Ordinance 2001 to identify exemptions to be withdrawn in future. The withdrawal of exemptions under SROs and amendments through Sales Tax Act 1990 and Income Tax Ordinance 2001 would be simultaneously done in a systematic manner, sources added.

Under the three-year plan to phase out exemptions, some exemptions may be withdrawn from January 2014. Certain exemptions would be taken away in next federal budget (2014-15). The remaining exemptions would be taken away in subsequent two fiscal years. However, the plan would be finalised by December 31, 2013 to withdraw unnecessary sales tax concessions and exemptions.

Sources said that the committee has also identified all such SROs which are creating distortions in the taxation regime. The committee also reviewed all such SROs for possible withdrawal along with the impact of each of the notification on relevant taxes. The committee finalised the SROs causing revenue loss to the national exchequer and distorting the entire taxation regime.

Taking into account the observations of Ministry of Finance, Commerce Ministry and NTC, the FBR reviewed the list of SROs and exemptions/concessions. On approval of the plan to withdraw exemptions, senior officials of Finance Ministry and the FBR would give presentation to Prime Minister Nawaz Sharif in next 1-2 days.

Sources said the sensitivity of the issue to withdraw exemptions can be judged from the fact that the matter would be taken up to the highest level of Prime Minister for approval.

The major sales tax concessionary SROs in 2012-13 were SRO.727(I)/2011 (plant and machinery); SRO.549(I)/2008 (zero percent sales tax on specific goods); SRO.811(I)2009 (zero-percent sales tax on polyethylene and polypropylene); SRO.575(I)/2006 (machinery, equipment, apparatus and items including capital goods); SRO.492(I)/2009 (temporary imports); SRO.551(I)/2008 (exemption from sales tax on imports of certain goods); SRO.863(I)/2007 (zero-rating of specific goods); SRO.69(I)/2006 (levy of sales tax on rapeseed) and Sixth Schedule of the Sales Tax Act, 1990.

It was also discussed to reduce the number of concessionary Statutory Regulatory Orders (SROs) regarding customs duty and allow reduced rates/duties under Pakistan Customs Tariff (PCT) to end disputes related to interpretation of SROs. There are certain exemptions and concessions of customs duty which are available in the SROs as well as under the PCT. The availability of the tariff concessions under the PCT would end the disputes on calculation of customs duty through interpretation of SROs. Secondly, it will bring simplification in the customs duty regime.

There are SROs which also provide industry specific concessionary/reduced rates of customs duty. As a policy measure, the FBR wanted to reduce the number of such SROs. The exemptions and concessions available under the SROs would be shifted to the PCT so that the reduced rates will be available under standard tariff regime.

Instead of giving concessions through the SROs, it would be more appropriate to bring all such concessionary items under the relevant headings of the Pakistan Customs Tariff. – *Courtesy Business Recorder*

‘Political will needed to curb under-invoicing, smuggling’

Chief Collector Customs Lutfullah Virk has said that administrative action, fiscal measures and above all political will are needed to curb under-invoicing and smuggling that are the biggest threats to the economy. He was speaking at the Lahore Chamber of Commerce and Industry (LCCI) on Thursday.

LCCI President Engineer Sohail Lashari, Vice President Kashif Anwar, former presidents Iftikhar Ali Malik, Mian Anjum Nisar, former vice presidents Aftab Ahmad Vohra, Shafqat Saeed Paracha and executive committee members were also present on the occasion.

The Chief Collector Customs said that the menace of smuggling/under-invoicing was not only eating up huge government revenue but also hitting the genuine businessmen very hard and a number of anti-smuggling measures are afoot to tackle this issue.

Lutfullah said that the Customs Department is a bridge between Federal Board of Revenue and the private sector, therefore, all the genuine demands of the business community would be addressed. About the complaints of valuation, the Customs Chief clarified that review provision was the best tool to deal with wrong valuation, therefore, the LCCI should activate its valuation committee by inducting more professionals in it.

The Customs Chief said that it was heartening to note that no organised duty evasion or misdeclaration was found in Lahore and its revenues registered a surge of 28 per cent for, which the credit goes to the private sector.

He said that the Customs department always needed business community feedback, therefore, the Lahore Chamber should strengthen its liaison with customs officials.

When his attention was drawn towards dilapidated condition of the T10 section of the Railway Station and the challenges being faced by the business community while dealing with NLC, Lutfullah Virk said that he would look into the issues to get them resolved at the earliest. Over the issue of DTRE, the Customs Chief said he has given necessary directions to the concerned officials to resolve the issue.

LCCI President Sohail Lashari and Vice President Kashif Anwar urged the Customs Chief that the up-country businessmen should be taken on board while determining the value of the goods as the higher valuation of goods and raw materials is not only jacking up cost of doing business in the country but encouraging corruption and smuggling.

The LCCI office-bearers said that undue interference of Customs Intelligence officials into the smooth running of businesses was not only creating troubles for private sector but was also adversely affecting the revenues, therefore, a mechanism should be adopted to put this practice to an end.

They urged the Chief Collector Customs to ensure that any action taken by the Customs Department should not be against the interests of the business community who are major contributor towards the national exchequer.

They also urged the Collector Customs to convene, at the earliest, the meeting of the committee constituted by the Ministry of Commerce under the headship of Customs Collector comprising members from NLC, Rangers, National Bank of Pakistan, TDAP and an LCCI nominee in order to improve the day-to-day working at the Wahga Border.

They said that it was very unfortunate since the constitution of the committee, no meeting had been called.

Kashif Anwar said that the Lahore Chamber had received a number of complaints from its members that consignments for exports are damaged during the forwarding process and importers often complain about receipt of less quantity than mentioned in the packaging list, invoice, therefore, a probe should launched to stop this wrong doing. – *Courtesy Business Recorder*

Steel sector businessman arrested for ST evasion

Regional Tax Office (RTO) Lahore has arrested an influential and powerful businessman in steel sector for his alleged involvement in sales tax evasion to the tune of Rs 100 million. Official sources told here on Thursday that an FIR has been registered against the accused and judicial remand has been obtained from the magistrate against the alleged tax evader.

Further investigation is underway which would result in arrest of more persons in steel sector involved in tax frauds. Details of the case revealed that the accused had been hoodwinking all kinds of Inland Revenue (IR) set-up in Lahore. It is learnt that he is either front man or advisor to chronic sales tax evaders in steel sector or operating with different business names. Interestingly, he is said to be a close relative of some officer of IRS in Lahore. Sources further disclosed that in last meeting of Special Steel Committee appointed by Finance Minister one of the persons from the committee was critical of not putting hands on this influential accused. It was learnt that the department was already working on this person and discovered that the person had been running different concerns in the steel sector (steel melters or re-rollers).

RTO Lahore during exercise regarding crackdown on tax evaders in steel melting and re-rolling sector decided to take such persons to the task irrespective of their financial or political clout. The team of RTO Lahore diligently worked and found that this person apart from working as a front man for different tax evaders in the steel sector is running to concerns in his name which alone committed tax fraud of Rs 100 million. – *Courtesy Business Recorder*

Provincial Excise & Taxation Departments to be linked with FBR Databank

The Federal Board of Revenue (FBR) is planning to link all four Provincial Excise & Taxation Departments with the FBR Databank to electronically collect motor vehicles data for registration of vehicle owners and maintaining withholding tax deduction data.

Sources told here on Thursday that the initiative has been taken by Chief Executive Officer (CEO) Pakistan Revenue Automation Limited (PRAL) to ensure electronic transmission of data from the Provincial Excise & Taxation Departments to the FBR. Formal approval of the tax authorities have been obtained for implementation of the plan. Senior Manager Operations PRAL Karachi, Lahore, Islamabad, Peshawar and Quetta would meet the Provincial Excise & Taxation Departments to finalise modalities to establish electronic linkage between the provincial departments and the FBR.

Details revealed that the issue of motor vehicle registration-electronic transmission of data to FBR was discussed threadbare during the last meeting of the Chairman, FBR with Secretaries, Provincial Excise & Taxation Departments, at the FBR House on November 27, 2013. A consensus was developed among the stakeholders to electronically maintain data of the newly registered vehicles for documentation as well as deduction of tax purposes. It was also agreed that the FBR will obtain an electronic link with the Provincial Excise & Taxation Departments to facilitate broadening of tax-base exercise.

CEO PRAL has directed its field formations to visit the Director General, Excise & Taxation Department of the respective Province/Islamabad Capital Territory, Islamabad and conduct a study regarding electronic communication of motor vehicles data from the respective Excise & Taxation Department to FBR with a view to ensuring that the data can constitute the monthly withholding tax statement and may be useful for computation of tax deducted.

The FBR has already informed the Provincial Excise & Taxation Departments about the withholding income tax rates on registration of new locally manufactured vehicles and withholding tax collected along with motor vehicle tax on old ones under section 234 & 231B of Income Tax Ordinance, 2001.

Through Finance Act, 2013 the rates of adjustable advance tax collected by every motor vehicle registering authority, at the time of registration of new locally manufactured motor vehicle have been revised. As per section 234 of the Income Tax Ordinance,2001 any person at the time of collecting motor vehicle tax shall also collect advance tax at the rates specified in Part IV of the First Schedule. If the motor vehicle tax is collected in instalments, the advance tax shall also be collected in instalments. – *Courtesy Business Recorder*

2013 TRI 2113 (S.C. Ind.)

SUPREME COURT OF INDIA

R.M. Lodha, J. Chelameswar and Madan B. Lokur, JJ.

The C.I.T-II Ahmedabad, Gujarat
v.
M/s Mastek Ltd.

FACTS/HELD

Section 260A(4): High Court has power to hear the appeal on questions not formulated at the stage of admission of the appeal

1. The department filed an appeal u/s 260A in the High Court in which it raised several questions. The High Court admitted the appeal and framed two substantial questions of law. The Department filed a SLP claiming that by necessary implication, the other questions raised in the memo of appeal before the High Court had been rejected. HELD by the Supreme Court dismissing the SLP:

> The Revenue is under some misconception. The proviso following the main provision of Section 260A(4) of the Act states that nothing stated in sub-section (4), i.e., "The appeal shall be heard only on the question so formulated' shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question". The High Court's power to frame substantial question(s) of law at the time of hearing of the appeal other than the questions on appeal has been admitted remains under Section 260A(4). This power is subject, however, to two conditions, (one) the Court must be satisfied that appeal involves such questions, and (two) the Court has to record reasons therefor.

Special Leave Petition is dismissed.

Petition(s) for Special Leave to Appeal (Civil)....../2013 CC 3075/2013.

Heard on: 4th March, 2013.

Decided on: 4th March, 2013.

Present at hearing: R.P. Bhatt, Sr. Advocate, Sahil Tagotra, Om Prakash & Anil Katiyar, Advocates, for Petitioner. None, for Respondent.

JUDGMENT

Heard Mr. R.P. Bhatt, learned senior counsel for the petitioner.

We find that appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, 'Act') has been admitted by the High Court and two substantial questions of law have been framed for consideration of the appeal.

The grievance of the Revenue is that by necessary implication, the other questions raised in the memo of appeal before the High Court have been rejected.

We are afraid that the Revenue is under some mis-conception. The proviso following the main provision of Section 260A(4) of the Act states that nothing stated in sub-section (4), i.e., 'The appeal shall be heard only on the question so formulated' shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

The High Court's power to frame substantial question(s) of law at the time of hearing of the appeal other than the questions on appeal has been admitted remains under Section 260A(4). This power is subject, however, to two conditions, (one) the Court must be satisfied that appeal involves such questions, and (two) the Court has to record reasons therefor.

In view of the above legal position, we do not find any justifiable reason to entertain this special leave petition, although we are inclined to condone delay of 72 days.

Delay condoned.

Special leave petition is dismissed.
