Tax Review/Taxation

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Huzaima & Ikram
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This issue contains:

Kind regards

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Need for National Tax Agency

by
Huzaima Bukhari & Dr. Ikramul Haq

Federal Board of Revenue (FBR) has been serving the interests of rich and mighty in Pakistan. The privileged classes have been getting enormous tax benefits through Statutory Regulatory Orders (SROs). Pakistan can never come out of existing fiscal mess unless SRO culture is abolished and FBR is replaced with National Tax Agency (NTA) that can effectively enforce tax laws both at federal and provincial level. Had FBR been an effective body, it could have compelled all the taxable persons—not less than 20 millions—to file tax returns and pay due taxes. Equally incompetent and ineffective are provincial revenue authorities that have miserable failed to collect agricultural income tax imposed since 2000 as well as other taxes and levies.

FBR mercilessly wasted borrowed funds of millions of dollars given by the World Bank and other donors for implementation of a comprehensive five-year-long Tax Administration Reform Project (TARP) that was extended for another year on the request of Pakistan. FBR, since the inception of TARP failed on all fronts—in meeting revenue targets, broadening of tax base, countering corruption and leakages, implementing sales tax, increasing share of direct taxes and improving tax-to-GDP ratio. At the end of TARP, tax-to-GDP ratio nosedived to 8.8% from 9.4% in the year when the programme started! Despite having both money and expertise, FBR could not introduce an effective automated tax intelligence system to bridge the huge tax gap of over 200%. The World Bank in its report, "**Implementation, Completion and Result Report**" issued on the completion of TARP, observed: "The current narrow-base of general sales tax (GST) in Pakistan remained almost entirely unchanged throughout 2005-2012, despite efforts to overhaul the indirect taxation structure by introducing a reformed GST featuring few exemptions and wide coverage of goods and services."

This is the sordid story of tax reforms in Pakistan even when enormous funds—over US$100 million—and best professional advice was available. As confirmed by the report of World Bank, FBR not only as an organisation lost its credibility and usefulness, but proved to be counterproductive for the very purpose for which it was established—see figure of collections from 1996-97 to 2012-13 [**Table A]** confirming over all poor performance.

The World Bank concluded that "during the economic crisis period and subsequent years (2008-11), GST productivity index declined at a higher rate compared to FBR tax-GDP despite a swift turn-around in project implementation and concomitant positive trends in some outputs by the last two years of project life." The report while pinpointing out weak compliance levels, lackluster results in reform implementation, especially those related to short term actions aimed at curbing evasion through more effective enforcement actions by the final year of project implementation, noted "performance from 2008 onwards, far from the project's objectives envisioned at the outset". At the end of TARP like sales tax, income tax indicators were extremely poor [**Table B]**. Out of total population of 180 million less than 1.45 million filed returns in 2011—disturbingly the share of business returns was only 35.5%.

Table A: FBR: Performance : 1996-07 to 2012-13

(*Rs. in billion*)

Year	Targets	Collection	Growth in Collection (%)	Target Achieved (%)	Tax to GDP ratio
1996-97	286.0	282.1	5.2	98.6	11.6
1997-98	297.6	293.6	4.1	98.7	11.0
1998-99	308.0	308.5	5.1	100.2	10.5
1999-00	351.7	347.1	12.5	98.7	9.1
2000-01	406.5	392.3	13.0	96.5	9.3
2001-02	414.2	404.1	3.0	97.6	9.1
2002-03	458.9	460.6	14.0	100.4	9.4
2003-04	510	520.8	13.1	102.1	9.2
2004-05	590	590.4	13.4	101.8	9.1
2005-06	690	713.4	20.8	103.4	9.4
2006-07	935	847.2	18.8	101.5	9.8
2007-08	1.000	1008.1	18.9	100.8	9.8
2008-09	1,179	1157.0	14.8	98.1	8.9
2009-10	1,380	1327.4	14.7	69.0	9.0
2010-11	1,667	1587.0	19.6	95.2	8.8
2011-12	1952.3	1883.0	18.2	96.5	9.1
2012-13	2007	1939.4	03.0	96.6	8.5

Source: *Economic Annual Surveys & FBR Year Books*

Table B: Total number of returns/statements received in 2011

Nature	Number
Business returns	513,044
Salary returns	160,903
Employees' statements	769,467
Total	**1,443,414**

Source: Data compiled by PRAL

Legislators and tax collectors jointly turned Pakistan into a tax haven—a paradise for tax dodgers and plunderers of national wealth. Pakistan is perhaps the only country where 70% legislators were found guilty of not filing tax returns and then shameless claimed since tax was deducted at source on emoluments received as holders of public office there was no need for it! Our Parliament encourages tax evaders by legitimizing untaxed money "remitted" (sic) through normal banking channels—reference section 111(4) of the Income Tax Ordinance, 2001. One just has to go to a money exchange company, give them local currency and fake remittance is fixed at a nominal commission! This facility, they claim, is necessary for "growth" of economy. Such lethal prescriptions for economic growth have actually destroyed the entire social fabric of the society—we have no tax culture because of these policies of appeasement having State patronage.

FBR, as it exists, is not only fraught with corruption but lacks professionalism and competence. The worst example of protecting self-interest surfaced on 26 May 2012 when for officers in Grade 20 to 22 rate of tax on monetized transport allowance was reduced to just 5% through SRO 569(I)/2012. This benefit for bureaucracy, including FBR officials, was secured by blatantly bypassing the Parliament. Obviously Auditor General of Pakistan would never raise an objection being a beneficiary! This proves how bureaucrats rob the nation. Private sector employees for the same allowance are taxed at normal rates applicable to taxable Salary income!

In the prevailing scenario, the only viable solution is to replace FBR with NTA, responsible for collection taxes for centre, provinces and local governments. NTA must be run by independent Board of Directors comprising professionals. All the governments should discuss this idea and pass the necessary laws. The independence of NTA would certainly be respected by all the governments being a national and independent body and not a useless government department. After meeting its expenses, NTA would distribute taxes to the respective governments to which these relate.

At present, both centre and provinces are not collecting taxes diligently and same will happen to local governments once elected. Our tax potential at federal level alone is Rs. 8 trillion. If agricultural income tax and other provincial and local taxes are also collected efficiently, the total figure would be around Rs. 12 trillion. For harnessing the full tax potential at federal, provincial and local government levels, NTA is the need of the hour. Through consensus and democratic process, all the parliaments can enact laws for establishing autonomous National Tax Agency that will facilitate people to deal with single Revenue Authority rather than multiple agencies at national, provincial and local levels. The mode and working of NTA can be discussed and finalised under Council of Common Interest [Article 153] and its control can be placed under National Economic Council [Article 156].

Canada

Canadian Govt Explains Benefits Of EU CETA

Canadian ministers have been touring the country's provinces to promote the widespread benefits expected from the Comprehensive Economic and Trade Agreement (CETA) recently inked with the European Union (EU).

International Trade Minister Ed Fast described the CETA as "the biggest, most ambitious trade agreement that Canada has ever reached, and it will generate substantial gains across all key economic sectors covering every region of Canada." Fast believes that Canada's preferential access to both the EU and the US "will make Canada the envy of trading nations all over the world. It will also make Canada an even more attractive destination for investors and manufacturers, and this in turn will create thousands of new jobs and new opportunities for all Canadians."

Fast told workers in Nova Scotia that the planned elimination of tariffs on Canadian fish and seafood exports to the EU will "create the conditions for increased sales, which will directly benefit Nova Scotians through new jobs, new opportunities and higher wages." At present, the EU levies a 20 percent tariff on cooked and peeled shrimp, an 8 percent tariff on live lobster, tariffs at 6 to 16 percent on frozen lobster, and an 8 percent rate on frozen scallops. The EU is Nova Scotia's second largest export destination, and its largest trading partner.

In Quebec, Fast, together with Public Safety Minister Steven Blaney, made much of the agreement's removal of almost 94 percent of EU agricultural tariffs. After seven years, this figure will rise to 95 percent. The CETA will provide new market access opportunities for key agricultural exports, such as beef, pork, and bison. Quebec's agricultural exports to the EU were worth an average of CAD688.5m (USD658.6m) a year between 2010 and 2012.

Agriculture plays a similarly large role in Prince Edward Island's economy. Fisheries Minister Gail Shea described the CETA as "a big win for P.I.E.'s workers and families." The CETA will scrap the existing tariffs of up to 17.6 percent on processed potato goods, and will lock in a duty-free rate that could otherwise reach 14.4 percent on fresh and frozen fruits and vegetables.

International Development Minister Christian Paradis was also on hand in Quebec. He focused on the anticipated boost to the province's manufacturing industry, which currently employs around 500,000 workers. Once the CETA enters into force, the manufacturing industry will see approximately 99 percent of EU tariffs eliminated on industrial product.

Paradis said: "The manufacturing industry is one of the pillars of the Quebec economy. The EU is already Quebec's second-largest trading partner and export destination, and with this deal our government is ensuring Quebec companies will enjoy preferred access and a competitive edge over outside competitors." – *Courtesy tax-news.com*

Malaysia

Malaysia's Budget Balances Tax Cuts With GST Introduction

In Malaysia's Budget for 2014, Prime Minister and Minister of Finance Najib Razak looked to demonstrate the Government's commitment to fiscal consolidation by mixing the introduction of a goods and service tax (GST) and increased property taxation, with cash handouts and cuts in both individual and corporate income taxes.

While Malaysian gross domestic product (GDP) is expected to grow strongly next year by up to 5.5 percent, after around 5 percent this year, as the global economic situation is also forecast to improve, Government's revenue collection is estimated at MYR224.1bn (USD71.3bn), an increase of MYR4bn from 2013. Its fiscal deficit should decline from 4 percent of GDP in 2013 to 3.5 percent in 2014.

Last June, the Government established the Fiscal Policy Committee (FPC). The role of the FPC is to strengthen the Government's financial position and ensure fiscal sustainability. Najib confirmed that the fiscal deficit will continue to be reduced gradually, with the aim of achieving a balanced budget by 2020. The Government will also ensure that Federal debt level will remain low and not exceed 55 percent of GDP.

Najib announced plans to abolish the present sales tax and service taxes, and to replace them with the GST. With the current inflation rate low and contained at 2 percent, the Government believes that this is the best time to implement a GST, whose rate will be 6 percent and effective from April 1, 2015.

He pointed out that the proposed GST rate will be the lowest among countries within the Association of Southeast Asian Nations – compared with 10 percent in Indonesia, Vietnam, Cambodia, the Philippines and Laos, and 7 percent in Singapore and Thailand – and it will not be imposed on basic food items, water and initial electricity supplies, services provided by the Government, transportation and selected financial services and the sale, purchase and rental of residential properties.

Upon implementation of GST, the Government is committed to provide various forms of assistance to counteract the fall in disposable incomes of those on lower incomes, including one-off cash grants to households and individual income tax rate reductions of 1-3 percent for all taxpayers, so as to ensure that some 300,000 persons will no longer pay tax (generally, families with a monthly income of MYR4,000 will no longer have a tax liability).

To ensure a more progressive tax structure, the chargeable income subject to the maximum rate will be increased from that exceeding MYR100,000 to MYR400,000. However, the current maximum tax rate of 26 percent will also be reduced to 24 percent, 24.5 percent and 25 percent.

In addition, to ensure smooth GST implementation by businesses, the Government proposes that the corporate income tax rate be reduced by 1 percent to 24 percent, while the income tax rate for small and medium-sized enterprises will be reduced by 1 percent to 19 percent, from the 2016 year of assessment.

The cost of purchasing information technology (IT) equipment and software will also be given an Accelerated Capital Allowance until the 2016 year of assessment; and expenses incurred for training in accounting and IT relating to the new GST will be provided with a further tax deduction for the 2014 and 2015 years of assessment.

With regard to housing, the Government has recognized that the recent sharp increase in the prices of houses, particularly from speculative activities, has affected people's ability to purchase houses. In that respect, the Government will increase the rate of real property gains tax (RPGT) to 30 percent on properties disposed within a holding period of up to 3 years. For disposals within a holding period up to 4 and up to 5 years, the RPGT rates are increased to 20 percent and 15 percent, respectively.

For disposals made in the sixth and subsequent years, no RPGT is imposed on individuals, whereas companies are taxed at 5 percent.

For non-residents, RPGT is imposed at 30 percent on the gains from properties disposed within a holding period of up to 5 years, and for disposals in the sixth and subsequent years, RPGT is imposed at 5 percent. The minimum price of property that can be purchased by foreigners is increased from MYR500,000 to MYR1m.

Finally, to further promote Malaysia as a tourist destination, the Government will continue to encourage investments particularly in new 4 and 5-star hotels, to ensure an adequate supply of international-standard accommodation and increase tourist arrivals, especially from the luxury and high-spending category. To support this, the Government proposes the application period for their investment tax allowance incentives be extended for another 3 years until December 31, 2016. – *Courtesy tax-news.com*

European Union – China

EU, China Hold High Level Trade, Economic Talks

The European Union (EU) and China expect to commence negotiations for an investment agreement next month.

The two sides met in Brussels last week, as part of the broader High Level Economic and Trade Dialogue (HED) initiative. The meeting focused on the planned EU-China Investment Agreement, and on arrangements for the formal launch of talks. Attendees stressed the need for reciprocity in access for EU and Chinese investors to each other's markets and for a more balanced trade relationship.

Commenting on the meeting, Olli Rehn, Vice-President of the European Commission, said that the EU has two main objectives for the talks. He explained: "On one side we will be looking to improve the protection of EU investments in China as well as Chinese investments in Europe, thereby improving legal certainty and predictability for investors.

"But there is another critical element: A future agreement must cover improved access to the Chinese market. By reducing barriers to investing in China we will see increased bilateral investment flows. Market access and investment are natural partners. One without the other does not make any sense.

"An ambitious investment deal will also allow our trading relationship not only to deepen, but also to progress in new directions."

The HED was set up in 2007, with the aim of addressing the imbalance in bilateral trade flows between the EU and China. EU companies invested EUR9.9bn (USD13.7bn) in China in 2012, with Chinese foreign direct investment (FDI) into the EU totalling EUR3.5bn. However, China accounts for just 2 percent of overall European investments abroad, while Chinese investments into the EU represent only 2.2 percent of total FDI investment flows into the EU. – *Courtesy tax-news.com*

Tax evasion: LHC tells Macca Group to allow FBR access

Justice Ijazul Ahsan of the Lahore High Court on Monday directed the Macca Group of Companies to provide documentation requested by the Federal Board of Revenue (FBR) so it can complete an investigation into alleged tax evasion of Rs1 billion.

The judge vacated a stay order against the tax recovery and directed the FBR to conclude its inquiry and then report to the Supreme Court. He said no "adverse order" should be passed against the group until the report was filed.

The tax evasion claims against the Macca Group of Companies – which consist of Haq Bahu Sugar Mills, Macca Sugar Mills and Al-Asif Sugar Mills – were made by a former employee, Liaqat Ali. He told the chief justice of Pakistan that it had concealed its true production and sales using 'benami' bank accounts. He also alleged that the group had illegally adjusted input tax on fake invoices issued by its sister concerns.

On May 21, 2012, the Supreme Court directed the FBR to investigate and submit a report. The FBR formed an inquiry committee, which asked the group to provide certain documents. The group moved the LHC, which stayed the investigation.

FBR counsel M Ilyas Khan and M Yahya Johar submitted that the LHC had on October 9, 2012, allowed the board to proceed with the inquiry. The FBR sent the group a second notice, but it did not provide the required documents.

They said that the FBR had established links between the benami bank accounts and the group and uncovered fraud of around Rs3 billion. – *Courtesy The Express Tribune*

FBR reduces sales tax from 17 to 16pc

The Federal board of Revenue (FBR) has reduced the General Sales Tax from seventeen percent to sixteen percent and a notification issued in this regard.

According to a SRO 946 (I) 2013 issued here on Monday it said that sales tax shall be charged and collected on import and local supply of goods at the rate of sixteen percent for the period of June 21 to June 29, 2013.

Earlier these were chargeable to the sales tax at the rate of seventeen percent.

The notification further revealed that this reduction in sales tax will not be applicable in those cases where the incidence of tax has been passed on in terms of section 3B of the said Act.

Official sources said that this step has been taken to facilitate the business community of the country as they have collected seventeen percent GST from poor consumers of the country. – *Courtesy Online International News Netwrok*

Auto industry meeting: panel rejects policy prepared by EDB

A high-level panel headed by Minister for Water and Power, Khawaja Muhammad Asif on Monday rejected the Auto Industry Development Policy (AIDP) prepared by the Engineering Development Board (EDB) operating with an acting chairman, well-informed sources told. A large congregation of representatives from the auto sector arrived in Islamabad from all over Pakistan.

They faced inconvenience and disappointment when informed that Convenor, ie, Minister for Water and Power, Khawaja Muhammad Asif and Chairman Federal Board of Revenue (FBR) Tariq Bajwa would not attend the meeting. “It is embarrassing for us. Why did the industries ministry call a meeting if the ‘headless’ EDB has been unable to prepare an auto industry development policy draft based on ground facts,” said one of the invitees on condition of anonymity.

Khawaja Asif during the stint of the previous government had criticised local car assemblers in a Public Accounts Committee (PAC) meeting for overpricing and quality of cars. Sources said Secretary Industries and Production (MoI&P) who is also the acting CEO EDB gave a presentation to the Minister for Water and Power and Chairman FBR for two hours but failed to convince them that whatever his department had formulated was adequate for the auto industry.

According to sources, EDB officials were instructed by the Secretary Industries not to print the AIDP fearing that it could be leaked. The sources said Secretary Industries sat in the meeting for 10 minutes and on his departure requested all the stakeholders to send two-page briefs to the EDB. The next meeting is now scheduled after one week.

The sources said Secretary Industries briefed the representatives of auto sector that the minister would like an update on all sectors of auto industry. “We reckon that the minister wants to familiarise himself with every subsector of auto industry prior to presiding over the meeting," said one of the participants. Insiders claim that auto industry and EDB have already finalised a draft of the auto policy with consensus. However, some quarters in the government feel that AIDP draft appears to be prepared by the auto sector and not the EDB whose staff is facing charges of receiving financial benefits from the auto giants.

"An agreed draft of industry already exists," said Pervez Ghias, Chairman Pakistan Auto Manufacturers Association (PAMA). PAMA which was angry over the presence of Chairman All Pakistan Motor Dealers Association (APMDA) H M Shahzad, also called their dealers on the plea that they are real instruments of growth in auto sector.

The ECC was informed on October 2, 2103 that not a single car manufacturer in the country could complete its deletion. Official documents further disclose that an auto industry policy was being formulated and its first draft was ready but the ECC observed that the draft policy should be based on thorough review of the existing facilities being offered to auto industry, the need for new entrants in the sector, the existing duty structure on import of motor vehicles, the EDB standards, the requirement of a long-term policy framework, etc. "I want an auto policy to be formed in a way that it should strategize export of auto parts and vehicles in addition to growth of auto industry domestically," said Nabeel Hashmi, a key member of PAPAAM. – *Courtesy Business Recorder*

Smuggling of arms and ammunition: Commission suggests restoration of old FBR organisational structure

One-member Commission on 'smuggling of arms and ammunition' has strongly recommended restoration of old organisational structure of the Federal Board of Revenue (FBR) under which separate Members for Customs, Sales Tax, Federal Excise, Income Tax and Withholding Tax were independently dealing all the federal taxes.

Sources told here on Sunday that the former FBR Member Customs, Ramzan Bhatti has categorically declared in its fact-finding report that the reforms in the tax administration and new organisational structure of the FBR as a result of Tax Administration Reform Project failed to achieve the desired results, and resultantly there is low Tax-to-GDP ratio in the country.

While quoting the report, sources said that a massive effort was made with the financial and technical assistance to re-organise and re-structure the FBR and field formations during 2004 - 2010 under the title of Tax Administration Reforms Project (TARP). The project had failed to achieve its objectives and the money loaned had gone down the drain. The factual position is that the restructured FBR and field formations have failed to achieve the targeted goal of raising the tax-to-GDP ratio to 15%. Conversely, the tax-to-GDP ratio has declined over the period while the compliance cost ie administrative cost as well as taxpayers cost has increased.

Sources said that the stated objectives of broadening the tax base and providing the taxpayers a friendly environment have not been realised despite doubling the remunerations of tax functionaries and improvement of work environment. There is, therefore, a need to evolve a tax policy keeping in view the ground realities.

The Commission proposes review of existing tax policy on the following lines:

Firstly, the FBR which comprises of two functional Members ie One for Customs and other for all Domestic Taxes (Income Tax, Federal Excise and Sales Tax) and over a dozen supporting Members may be restructured with separate Members for Customs, Sales Tax, Federal Excise, Corporate Tax, Withholding Tax and rest of the Income Tax with a very few supporting Members, sources said.

Similarly, the field formations should be reorganised on functional basis to harness the full potential of each tax. It is a well established fact that a single Member or a Commissionerate cannot appropriately and comprehensively tackle with a number of tax regimes completely different from each other.

The experience shows that even the foreign investors/construction contractors etc are dealt with differently in each Commissionerate. The compounding problems are the refunds, issuance of exemption certificates and tax assessment of foreign companies which need to be centralised in the FBR on the pattern of a good experience of monitoring and issuing of sales tax refunds by the FBR. This will ensure a uniform system and procedure for taxpayers of each specified category and effectively plug the loopholes in revenue collection, sources quoted report of the commission. – *Courtesy Business Recorder*

S.R.O. 939(I)/2013, Islamabad, the 21st October, 2013.– In exercise of the powers conferred by sub-section (5) of section 18 of the Customs Act, 1969 (IV of 1969), the Federal Government is pleased to direct that the following further amendment shall be made in its Notification No. S.R.O. 693(I)/2006, dated the 1st July, 2006, namely:–

In the aforesaid Notification, after the TABLE, for the second proviso, the following shall be substituted, namely:–

> "Provided further that in line with the new entrant policy for motorcycle manufacturing industry with new technology notified by Ministry of Industries and Production vide Notification No. 4-1/2013/LED-II-(Vol-III), dated the 26th September, 2013, the additional customs-duty leviable under this notification shall not be charged on sub-components and components, imported in any kit form by a new entrant assembler or manufacturer, for assembly or manufacturing of motorcycles classified under PCT heading 87.11 specified in the said TABLE, for a period of five years from the start of assembly or manufacturing with new technology subject to the following conditions, namely:-
>
> (i) the new entrant assembler or manufacturer shall achieve the annual localization or indigenization targets / levels in accordance with the localization plan spreading over a maximum period of five years, duly approved by Ministry of Industries and Production;
>
> (ii) the additional customs-duty shall be levied on the sub-components and components which become localized / indigenized by the new entrant assembler or manufacturer, in accordance with the said localization plan;
>
> (iii) the new entrant shall abide by all the terms and conditions laid down in separate notifications issued by the Ministry of Industries and FBR for assembly or manufacturing of motorcycles; and
>
> (iv) the expressions 'new technology' and 'new entrant' shall bear the same meaning as declared or notified by the Ministry of Industries and Production in respect of Motorcycle Manufacturing Industry."

S.R.O. 940(I)/2013, Islamabad, the 21st October, 2013.– In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), the Federal Government is pleased to direct that the following further amendments shall be made in its Notification No. S.R.O. 656(I)/2006, dated the 22nd June, 2006, namely:–

In the aforesaid Notification,–

(a) after paragraph 2, the following new paragraph shall be inserted, namely:–

"2A. In line with the new entrant policy for motorcycle manufacturing industry with new technology notified by Ministry of Industries and Production vide notification No. 4-1/2013/LED-II-(Vol-III), dated the 26th September, 2013, the incentive of importing CKD kit in any form @ 10% customs-duty imported in terms of serial No. 11 of the following TABLE by the new entrant for assembly or manufacturing of motorcycles shall be withdrawn on components localized by the new entrant each year in accordance with the approved localization plan. The expressions 'new entrant' and 'new technology' shall bear the same meaning as declared or notified by the Ministry of Industries and Production in respect of motorcycle manufacturing industry."; and

(b) in the TABLE, in column (1), against serial No.11, in column (3), against item (i), in column (4), after the word "year", the words and figure "and 10% for motorcycles for new entrant for a period of five years" shall be added.

2013 TRI 1748 (H.C. Del.)

HIGH COURT OF NEW DELHI

Sanjiv Khanna and Sanjeev Sachdeva, JJ.

Commissioner of Income Tax -XIII
v.
Rajinder Kumar

FACTS/HELD

Section 40(a)(ia) TDS: Amendment by Finance Act 2010 permitting TDS payment till due date of ROI is retrospective. Bharati Shipyard 132 ITD 53 (Mum)(SB) disapproved

1. In 2007-2008 the assessee made professional payments for which TDS had not been paid by 31.3.2007 though it was paid before the due date for filing the return of income. The AO & CIT(A) disallowed the expenditure u/s 40(a)(ia) though the Tribunal deleted it by relying on Virgin Creations (Cal) which held that the proviso to s. 40(a)(ia) amended by the Finance Act 2010 has retrospective effect. On appeal by the department to the High Court HELD dismissing the appeal:

    The intention behind s. 40(a)(ia) is to ensure that TDS is deducted and paid. The object of introduction of s. 40(a)(ia) is to ensure that TDS provisions are scrupulously implemented without default in order to augment recoveries. It is not to penalise an assessee when payment has been made within the time stated. Failure to deduct TDS or deposit TDS results in loss of revenue and may deprive the Government of the tax due and payable. The provision should be interpreted in a fair, just and equitable manner. It should not be interpreted in a manner which results in injustice and creates tax liabilities when TDS has been deposited/ paid and the respondent who is following cash system of accountancy has made actual payment to the third party for services rendered. Also, s. 40(a)(ia), prior to the insertion of the proviso by the Finance Act 2010, was not free from interpretative difficulties and problems. The amended provisions are clear and free from any ambiguity and doubt and will help curtail litigation. The amended provision clearly support the view that the expression "said due date" used in clause A of proviso to the un-amended section refers to the time specified in s. 139(1) of the Act. The amended s. 40(a)(ia) expands and further liberalises the statue when it stipulates that deductions made in the first eleven months of the previous year but paid before the due date of filing of the return, will constitute sufficient compliance. Consequently, the proviso to s. 40(a)(ia) must be treated as retrospective in operation (Virgin Creations referred/ followed; Bharati Shipyard 132 ITD 53 (Mum)(SB) disapproved)

Appeal accordingly disposed of.

Income Tax Appeal No. 65/2013.

Decided on: 1st July, 2013.

Present at hearing: N.P. Sahni, Sr. Standing Counsel, for Appellant. M.P. Devanath & R. Ramachandran, Advocates, for Respondent.

JUDGMENT

Sanjiv Khanna, J.–

Having heard learned counsel for the parties, we frame the following substantial question of law:

> "Whether the Income Tax Appellate Tribunal was right in deleting addition of Rs.78,51,800/- under Section 40(a)(ia) of the Income Tax Act, 1961?"

2. With the consent of the counsel for the parties, we have heard arguments and proceed to dictate our decision on the aforesaid question.

3. The respondent-assessee is an individual and an architect by profession. It is an accepted position and it is recorded and noted in the assessment order itself that the assessee is following cash system of accounting.

4. The assessment year involved is 2007-2008.

5. The Assessing Officer referred to the TDS payable account for professional payments as on 31st March, 2007 and noticed that an amount of Rs.8,52,034/- had not been paid by 31st March, 2007. The assessee was asked to explain why disallowance should not be made under Section 40(a)(ia) as amended by Finance Act, 2008 with retrospective effect from 1st April, 2005. The assessee filed written submissions that they had not claimed any expense on accrual basis and were following cash system of

accounting. However, for better control and record maintenance, they were maintaining a memorandum in the books. This memorandum was of no consequence as the assessee was claiming expenses on cash system and there were no sundry creditors or liabilities at the end of the year. In the month of February, 2007, Rs.8,33,064/- was shown in the TDS account on account of professional charges amounting to Rs.1,48,49,500/-. Rs.69,92,000/- was paid in the month of February, 2007 and TDS of Rs.3,92,221/- thereon was deposited on 7th March, 2007. The balance amount of Rs.78,51,800/- was paid/released in the month of March, 2007 and TDS was deducted and was paid on the said amount before the due date in the month of April, 2007. Deduction, therefore, was due and made in the month of March, 2007 and the TDS was deposited in the Government account in April, 2007, i.e., within the stipulated time.

6. The Assessing Officer after noticing the submission did not deal with it but observed that there was violation of Section 40(a)(ia) as TDS should have been paid on or before 31st March, 2007 and as expenses of Rs.78,51,800/- had been debited to the professional charges account in February, 2007, i.e., prior to March, 2007.

7. The Commissioner of Income Tax (Appeals) upheld the said addition under Section 40(a)(ia) observing that Section 194J required deduction of tax at source either at the time of payment or at the time of credit of such sum to the account of the payee, whichever is earlier. It did not make any difference whether the assessee was following cash system or mercantile system. Reference was made to Explanation (c) to Section 194J which stipulates that credit to suspense account or account by any other name in the books of accounts required deduction of TDS.

8. On further appeal by the respondent-assessee, ITAT by their order dated 1st August, 2012 has deleted the said addition relying upon decision dated 23rd November, 2011 of the Calcutta High Court in ITA No. 302/2011 GA No. 3200/2011, *Commissioner of Income Tax versus Virgin Creations*. In the said decision, it has been held that the proviso to Section 40(a)(ia) of the Act amended by Finance Act, 2010 has retrospective effect.

9. Learned counsel for the appellant submits that the decision of the Calcutta High Court in the case of Virgin Creations (supra) should not be applied and the ratio laid down in the said decision is debatable. Amendments were made to the proviso to Section 40(a)(ia) of the Act by Finance Act, 2010 and these are not retrospective but applicable to and from assessment year 2010-11 onwards. He has referred to Full Bench decision of the tribunal in *Bharati Shipyard Limited versus Deputy Commissioner of Income Tax*, (2011) 11 ITR Tribunal 599 in support. Reference is also made to the decision of the Bombay High Court in *Commissioner of Income Tax versus Shyam Narayan and Brothers*, (2012) 349 ITR 145.

10. Respondent assessee, on the other hand, relies upon the decision of the Calcutta High Court in Virgin Creations (supra) and reference is also made to the decision of the Supreme Court in *Allied Motors (P) Limited versus Commissioner of Income Tax*, (1997) 224 ITR 677 and *Commissioner of Income Tax, Bombay and Others versus Podar Cement Private Limited and Others*, (1997) 5 SCC 482.

11. At the outset, we notice and record that the decision of the Bombay High Court in Shyam Narayan and Brothers (supra) does not lay down or propound any ratio applicable to the question of law raised in the present case. The said decision does not examine or affirm the ratio by the Full Bench decision of the tribunal in Bharati Shipyard Limited (supra). Bombay High Court records that the earlier decision of the tribunal in the case of *Bansal Parivahan (India) Private Limited versus ITO*, (2011) 9 ITR Tribunal 565 stands overruled by Bharati Shipyard Limited (supra), which is a factual assertion. It did not examine on merits the ratio and reasoning of the tribunal in Bharati Shipyard Limited (supra) and/or affirm or disapprove the same. The order of the tribunal in the case of Shyam Narayan and Brothers (supra) was set aside for re-examination as the tribunal had followed the decision in the case of Bansal Parivahan (India) Private Limited (supra) which stood overruled by the Full Bench. Thus, the said decision does not deal with the legal question raised before us.

12. The decision of the Calcutta High Court in Virgin Creations (supra) is a short one and is as under:–

> "The Court: We have heard Mr.Nizamuddin and gone through the impugned judgment and order. We have also examined the point formulated for which the present appeal is sought to be admitted. It is argued by Mr.Nizamuddin that this court needs to take decision as to whether section 40A(ia) is having retrospective operation or not.
>
> The learned Tribunal on fact found that the assessee had deducted tax at source from the paid charges between the period April 1, 2005 and April 28, 2006 and the same were paid by the assessee in July and August 2006, i.e., well before the due date of filing of the return of income for the year under consideration. This factual position was undisputed. Moreover, the Supreme Court, as has been recorded by the learned Tribunal, in the case of Allied Motors Pvt. Ltd. And also in the case of Alom Extrusions Ltd., has already decided that the aforesaid provision has retrospective application. Again, in the case reported in 82 ITR 570, the Supreme Court held that the provision, which has inserted the remedy to make the provision workable, requires to be treated with retrospective operation so that reasonable deduction can be given to the section as well. In view of the authoritative pronouncement of the Supreme Court,

this court cannot decide otherwise. Hence we dismiss the appeal without any order as to costs."

13. Section 40(a)(ia) of the Act was introduced with effect from 1st April, 2005 by Finance (No. 2), 2004 Bill. Explaining the rationale behind insertion of the said Section, the Memorandum elucidated:–

> "With a view to augment compliance of TDS provisions, it is proposed to extend the provisions of section 40(a)(i) to payments of interest, commission or brokerage, fees for professional services or fees for technical services to residents, and payments to a resident contractor or subcontractor for carrying out any work (including supply of labour for carrying out any work), on which tax has not been deducted or after deduction, has not been paid before the expiry of the time prescribed under sub-section (1) of section 200 and in accordance with the other provisions of Chapter XVII-B. <u>It is also proposed to provide that where in respect of payment of any sum, tax has been deducted under Chapter XVII-B or paid in any subsequent year, the sum of payment shall be allowed in computing the income of the previous year in which such tax has been paid.</u>
>
> The proposed amendment will take effect from the 1st day of April, 2005 and will, accordingly, apply in relation to the assessment year 2005-06 and subsequent years. (clause 11)."
>
> (emphasis supplied)

14. Thereafter, by Finance Act, 2008 an amendment was made to Section 40(a)(ia) with retrospective effect from 1st April, 2005. Section 40(a)(ia) as amended by Finance Act, 2008 was as under:

> "40. Notwithstanding anything to the contrary in Sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "profit and gains of business or profession"...
>
> (ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resi-dent, or amounts payable to a contactor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been paid,–
>
> (A) <u>in a case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified in sub-section (1) of section 139; or</u>
>
> (B) in any other case, on or before the last day of the previous year;
>
> <u>Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted</u>

(A) during the last month of the previous year but paid after the said due date; or

(B) during any other month of the previous year but paid after the end of the said previous year,

such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid."

(emphasis supplied)

15. Section 40(a)(ia) was further amended by Finance Act, 2010 with effect from 1st April, 2010 and the amended provision now reads as under:

"(ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resi-dent, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or; after deduction, has not been paid on or before the due date specified in sub-section (1) of Section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deducted in computing the income of the previous year in which such tax has been paid."

(emphasis supplied)

16. The note on clauses and the memorandum explaining the amendments to Section 40(a)(ia) reproduced in (2010) 321 ITR Statutes 79 reads:

"Notes on Clauses:

Clause 12 of the Bill seeks to amend section 40 of the Income-tax Act relating to amounts not deductible.

Under the existing provisions contained in subclause (ia) of clause (a) of the aforesaid section, non-deduction of tax or non-payment of tax after deduction on payment of any sum by way of interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident or amounts payable to a contractor or sub-contractor, being resident, results in the disallowance of the said sum, in the computation of income of the payer, on which tax is required to be deducted under Chapter XVII-B.

It is proposed to amend sub-clause (ia) of clause (a) of the aforesaid section to provide that disallowance under the said sub-clause will be attracted, if, after deduction of tax during the previous year, the same has not been paid on or before the due date of filing of return of income specified in sub-section (1) of section 139.

The proviso to the said sub-clause provides that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the last month of the previous year but paid after the due date of filing of return or deducted during any other month of the previous year but paid after the end of the said previous year, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

This amendment will take effect retrospectively from 1st April, 2010, and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years."

17. We have noticed the facts of the present case. It is an accepted and admitted position that the assessee was following cash system and not mercantile system of accountancy. Neither the Assessing Officer nor the CIT (Appeals) have disputed the said factual position. The assessment order itself specifically records that the assessee was following cash system. It is not disputed in the assessment order or in the first appellate order that the assessee had paid a sum of Rs.78,51,800/- in the month of March, 2007 and had accordingly deducted TDS of Rs.4,40,843/- and the same was deposited within the due date from the date of said deduction in the month of April, 2007. Prior to that, the assessee had deducted TDS of Rs.3,92,221/- on professional charges of Rs.69,92,700/- in February, 2007. TDS on the said amount which was deducted in the month of February was deposited on 7th March, 2007, within the due date.

18. The aforesaid facts show that the assessee had made payment of Rs.78,51,800/- in the month of March, 2007 only and not in the month of February, 2007. The assessee has throughout stated and it is not disputed either in the assessment order or in the order passed by the first appellate authority that they were for convenience maintaining a Memorandum relating to pending bills but this Memorandum did not get reflected and was not shown in the annual accounts as sundry creditors or liabilities, which were payable. It was not booked as an expense or liability. The assessment order nowhere records or specifically holds that the account of the payee was credited with Rs.78,51,800/- or with Rs.1,48,49,500/-. The first appellate order again does not specifically state so. In such circumstances, we feel a pragmatic and a practical approach has to be adopted. The respondent assessee had deducted tax at source when the payment was made in the month of March, 2007 and thereafter deposited the payment in the month of April, 2007. It is an accepted position that in case tax was deductible in the month of March, 2007 the

due date of payment was in April, 2007 and before due date payment, Rs.4,40,843/- deducted as TDS in the month of March, 2007 was duly paid. It has to be accepted and it is logical that there would be some time gap between date of deduction of tax at source and when payment is deposited. Section 40(a)(ia) and the proviso as amended by Finance Act, 2008 with retrospective effect from 1st April, 2005 notices and acknowledges the said position and, therefore, clause (A) states that where tax "was" deductible and was so deducted during the last month of the previous year but stands paid before the due date specified under sub-section (1) to Section 139, deduction shall be allowed in the said year.

19. Proviso applies when tax was deducted in a subsequent year; when TDS has been deducted during any month of the previous year but paid after the end of the previous year; or TDS was deducted during the last month of the previous year but paid after the said due date. When proviso applies deduction is to be allowed in the year in which the payment is made. Clause A of the proviso has to be read with clause A of the main Section and not in isolation. Clause A of the main Section and clause A of the proviso will apply in different factual matrix or situations. Clause A of the main Section applies when the tax was deductable and was so deducted during the last month of the assessment year and was paid on or before the due date for filing of the return under Section 139(1). The proviso applies when tax has been deducted in any subsequent year or has been deducted as per clause A thereto during last month of the previous year, but has been paid after the said due date. The expression "said due date" cannot mean the date on which TDS as per the Chapter XVIII B should have been paid. It refers to the due date for filing of the return under Section 139(1) of the Act. Any other interpretation would lead to difficulties, incongruities and conflict between clause A of the main Section and clause A of the proviso. Both would be applicable to the same factual matrix/situation with contradictory stipulations or consequences. Under clause A of the main Section, the TDS deductable and so deducted during the last month should be paid on or before the due date for filing of the return under Section 139(1) but as per the Revenue under the proviso clause A, TDS should be deducted during the last month of the previous year but paid before the "said due date" i.e. the date by which TDS is payable under the Act. This interpretation if accepted means that clause A of the proviso and clause A of the main Section would become irreconcilable and mutually contradictory. Clause A of the proviso does not postulate the obvious but seeks to relax the rigor when tax deducted stands paid. This is the reason why the proviso in clause A does not use the expression "tax was deductable and was so deducted" but uses the expression "tax has been deducted …… during the last month of the previous year". The expression "said due date" in the clause A to the proviso does not mean and refer to the date on which tax should have been deposited without interest or penalty under Chapter XVII-B. This is obvious. Clause A to

the proviso applies when the deduction is post the period specified by law but in the last month of a previous year. In such cases under the proviso clause A, TDS should be paid before "the said due date" i.e. the date on which return under Section 139(1) of the Act is to be filed.

20. Therefore, when the respondent assesse deducted TDS in March 2007, i.e. last month of the previous year and paid the same before in April 2007 before the said due date i.e. the date on which return of Income U/s 139(1) of the Act is to be filed. Section 40(a)(ia) could not have been invoked.

21. Reference to Explanation clause (c) which states that credit to suspense account or any other account in book would be deemed to be credit in account of the payee is inappropriate. The said clause in the explanation is meant to curtail possibility or chance of non-deduction if an assesse credits a third account/head, instead of crediting the account of the payee to await deduction of TDS. It would not be appropriate to apply clause (c) of Explanation to section 194J to factual matrix of the current case. The amount was credited to the account of the payee, payment was made and TDS was deducted in March, 2007 and paid/deposited in April, 2007.

22. Now, we refer to the amendments which have been made by the Finance Act, 2010 and the effect thereof. We have already quoted the decision of the Calcutta High Court in Virgin Creations (supra). The said decision refers to the earlier decision of the Supreme Court in the case of Allied Motors (P) Limited (supra) and *Commissioner of Income Tax versus Alom Extrusions Limited*, (2009) 319 ITR 306 (SC). In the case of Allied Motors (P) Limited (supra), the Supreme Court was examining the first proviso to Section 43B and whether it was retrospective. Section 43B was inserted in the Act with effect from 1st April 1984 for curbing claims of taxpayers who did not discharge or pay statutory liabilities but claimed deductions on the ground that the statutory liability had accrued. Section 43B states that the statutory liability would be allowed as a deduction or as an expense in the year in which the payment was made and would not be allowed, even in cases of mercantile system of accountancy, in the year of accrual. It was noticed that in some cases hardship would be caused to assessees, who paid the statutory dues within the prescribed period though the payments so made would not fall within the relevant previous year. Accordingly, a proviso was added by Finance Act, 1987 applicable with effect from 1st April, 1988. The proviso stipulated that when statutory dues covered by Section 43B were paid on or before the due date for furnishing of the return under Section 139(1), the deduction/expense, equal to the amount paid would be allowed. The Supreme Court noticed the purpose behind the proviso and the remedial nature of the insertion made. Of course, the Supreme Court also referred to Explanation 2 which was inserted by Finance Act, 1989 which was made retrospective and was to take effect from 1st April, 1984. Highlighting the object behind Section

43B, it was observed that the proviso makes the provision workable, gives it a reasonable interpretation. It was elucidated:

> "12. In the case of *Goodyear India Ltd. V. State of Haryana* this Court said that the rule of reasonable construction must be applied while construing a statute. Literal construction should be avoided if it defeats the manifest object and purpose of the Act.

13. Therefore, in the well-known words of Judge Learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In the case of R.B. Judha Mal Kuthiala v. CIT, this Court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.

14. This view has been accepted by a number of High Courts. In the case of *CIT v. Chandulal Venichand*, the Gujarat High Court has held that the first proviso to Section 43-B is retrospective and sales tax for the last quarter paid before the filing of the return for the assessment year is deductible. This decision deals with Assessment Year 1985-85. The Calcutta High Court in the case of *CIT v. Sri Jagannath Steel Corpn.* has taken a similar view holding that the statutory liability for sales tax actually discharged after the expiry of the accounting year in compliance with the relevant statute is entitled to deduction under Section 43-B. The High Court has held the amendment to be clarificatory and, therefore, retrospective. The Gujarat High court in the above case held the amendment to be curative and explanatory and hence retrospective. The Patna High court has also held the amendment inserting the first proviso to be explanatory in the case of *Jamshedpur Motor Accessories Stores v. Union of India*. The special leave petition from this decision of the Patna High Court was dismissed. The view of the Delhi High Court, therefore, that the first proviso to Section 43-B will be available only prospectively does not appear to be correct. As observed by G.P. Singh in his Principles of Statutory Interpretation, 4th Edn. At p. 291: "It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended." In fact the amendment would not serve its object in such a situation unless it is construed as retrospective. The view, therefore, taken by the Delhi High Court cannot be sustained."

23. Section 43B deals with statutory dues and stipulates that the year in which the payment is made the same would be allowed as a

deduction even if the assessee is following the mercantile system of accountancy. The proviso, however, stipulates that deduction would be allowed where the statutory dues covered by Section 43B stand paid on or before the due date of filing of return of income. Section 40(a)(ia) is applicable to cases where an assessee is required to deduct tax at source and fails to deduct or does not make payment of the TDS before the due date, in such cases, notwithstanding Sections 30 to 38 of the Act, deduction is to be allowed as an expenditure in the year of payment unless a case is covered under the exceptions carved out. The amended proviso as inserted by Finance Act, 2010 states where an assessee has made payment of the TDS on or before the due date of filing of the return under Section 139(1), the sum shall be allowed as an expense in computing the income of the previous year. The two provisions are akin and the provisos to Sections 40(a)(ia) and 43B are to the same effect and for the same purpose.

24. In Podar Cement Private Limited (supra), the Supreme Court considered whether term 'owner' would include unregistered owners who had paid sale consideration and were covered by Section 53A of the Transfer of Property Act. The contention of the assessees was that the amendments made to the definition of term 'owner' by Finance Bill, 1987 should be given retrospective effect. It was held that the amendments were retrospective in nature as they rationalise and clear the existing ambiguities and doubts. Reference was made to Crawford: 'Statutory Construction' and 'the principle of Declaratory Statutes', Francis Bennion: 'Statutory Interpretation', Justice G.P. Singh's 'Principles of Statutory Interpretation', it was observed that sometimes amendments are made to supply an obvious omission or to clear up doubts as to the meaning of the previous provision. The issue was accordingly decided holding that in such cases the amendments were retrospective though it was noticed that as per Transfer of Property Act, Registration Act, etc. a legal owner must have a registered document.

25. In view of the aforesaid discussion in paras 18,19 and 20, it is apparent that the respondent assesse did not violate the unamended section 40(a)(ia) of the act. We have noted the ambiguity and referred their contention of Revenue and rejected the interpretation placed by them. The amended provisions are clear and free from any ambiguity and doubt. They will help curtail litigation. The amended provision clearly support view taken in paragraphs 17 – 20 that the expression "said due date" used in clause A of proviso to unamended section refers to time specified in Section 139(1) of the Act. The amended section 40(a)(ia) expands and further liberalises the statue when it stipulates that deductions made in the first eleven months of the previous year but paid before the due date of filing of the return, will constitute sufficient compliance.

26. Before we close, we must deal with another contention raised by the counsel for the Revenue to the effect that Finance Bill, 2010 increases the rate of interest from 12% to 18% for failure to deposit TDS in time. This increase in rate of interest, it is submitted, is directly connected and associated with the concession or benefit which was extended to the assessee by amending the proviso. We do not find any merit in the said contention. Even prior to the amendment made by Finance Bill, 2010, Section 40(a)(ia) had stipulated that in case where the tax was deductable and so deducted during the last month of the previous year but was paid on or before the due date specified in Section 139(1) of the Act, deduction/expenditure will be allowed in the previous year notwithstanding the main Section. The section as well as the proviso before the amendment in 2010 had ambiguities and doubts. The proviso as amended by Finance Act, 2008 with retrospective effect from 1st April, 2005 was not free from interpretative difficulties and problems. This aspect is highlighted above. The intention behind Section 40(a)(ia) is to ensure that TDS is deducted and paid. The object of introduction of Section 40(a)(ia) is to ensure that TDS provisions are scrupulously implemented without default in order to augment recoveries. It is not to penalise an assessee when payment has been made within the time stated. Failure to deduct TDS or deposit TDS results in loss of revenue and may deprive the Government of the tax due and payable. The provision should be interpreted in a fair, just and equitable manner. It should not be interpreted in a manner which results in injustice and creates tax liabilities when TDS has been deposited/paid and the respondent who is following cash system of accountancy has made actual payment to the third party for services rendered. If the said object and purpose is kept in view, we do not think the Assessing Officer was justified in disallowing and in invoking Section 40(a)(ia) in the present case. The question of law is accordingly answered in negative, i.e., in favour of the respondentassessee and against the Revenue. The appeal is accordingly disposed of. No costs.