

Tax Review/Taxation

Daily Alert Service

Huzaima & Ikram
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(Assessment Year : 2009-10) &
C.O. No.155(Mds)/2013 in
ITA No. 2076(Mds)/2012

Kind Regards,

Huzaima Bukhari
Editor

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United States-China

USTR reports to Congress on China's WTO compliance

Following the United States-China Joint Commission on Commerce and Trade (JCCT) in Beijing earlier this month, the Office of the US Trade Representative (USTR) has released its 2013 annual report on China's compliance with its World Trade Organization obligations, as was statutorily mandated by Congress in 2000.

The report highlights the status of China's policies and practices in areas such as intellectual property rights, industrial policies, services, agriculture and transparency, in addition to the main focus of the report's analysis that continues to be on trade concerns raised by US stakeholders that, in the view of the US Government, merit attention within the WTO context.

It is pointed out that trade has expanded dramatically among China and its many trading partners, including the US, since China joined the WTO in 2001. US exports of goods to China totalled USD110bn in 2012, representing an increase of 476 percent since 2001 and positioning China as the US's largest goods export market outside of North America (after Canada and Mexico).

However, it is reported that, "despite these remarkable results, the overall picture currently presented by China's WTO membership has remained complex, largely due to the Chinese Government's interventionist policies and practices and the large role of state-owned enterprises in China's economy."

"This heavy state role in the economy, reinforced by unchecked discretionary actions of Chinese government regulators," the report adds, has "generated serious trade frictions with China's many trade partners, including the US."

The report also confirms that, when trade frictions have arisen, the US has preferred to pursue dialogue with China to resolve them, but that, when dialogue with China has not led to the resolution of key trade issues, the US has not hesitated to invoke the WTO's dispute settlement mechanism.

Since China's accession to the WTO, the US has brought 15 WTO cases against China, more than twice as many WTO cases as any other WTO member has brought against China. "In doing so," the report concludes, "the US has placed a strong emphasis on the need for China to adhere to WTO rules, holding China fully

accountable as a mature participant in, and a major beneficiary of, the WTO's global trading system.”

The JCCT is the main forum for addressing bilateral trade issues and promoting commercial opportunities between the US and China. Working groups meet throughout the year to address topics such as intellectual property rights (IPR), agriculture, pharmaceuticals and medical devices, information technology, tourism and commercial law. In fact, the USTR announced key outcomes in the areas of IPR, government procurement and regulatory obstacles from its latest meeting. – *Courtesy tax-news.com*

Italy

Italy stops cash payments in 2014 to combat tax evasion

In the interest of increasing the traceability of payments in Italy, and thereby reducing the opportunities for tax evasion, cash payment for certain types of goods and services will be forbidden from January 1, 2014.

For example, according to a provision in the recently-approved 2014 Budget (Stability Law), and given the perceived incidence of unregistered properties in Italy, residential rental payments from the beginning of 2014 will have to be made in ways that exclude the use of cash and ensures their traceability, such as checks or bank transfers.

Within the Stability Law, there is also a provision for the costs of building reconstruction and energy saving, for which large tax deductions of 50 percent and 65 percent respectively have been renewed until December 31, 2014, to be made only by a means of payment, such as a bank transfer or card, that contains the details of both the person claiming the tax deduction and also information on the payment's beneficiary.

Payments by cash or checks are expressly forbidden, as they are for claims made on the purchase of furniture and kitchen equipment to claim for the additional deduction allied to reconstruction or energy-saving work.

The traceability of payments also forms part of the introduction of a “web tax.” The Stability Law includes a future obligation for all purchases of online advertising or copyright in Italy to be effected through a business that is registered for Italian value added tax, and that all payments for such services should be made by way of

bank transfers, or any other payment instrument, that contains the necessary data.

In addition, as provided for in previous legislation, from January 1, doctors, dentists, lawyers and other professionals should be obliged to have a “point of sale” terminal, so as to allow their clients to pay by bank transfer or cards. However, regulations have not yet been issued with regard to this obligation, and no penalties are foreseen in the legislation for non-adherence. – *Courtesy tax-news.com*

Hong Kong

Hong Kong introduces bill to lower tax for captive insurers

The Hong Kong Government has gazetted the Inland Revenue (Amendment) (No. 3) Bill 2013, aiming to cut down by half the profits tax on captive insurers, and to raise the deduction ceiling for retirement scheme contributions by employees or self-employed persons.

The Bill would reduce by half the profits tax on the offshore risks insurance business of captive insurers that are set up to underwrite the risks of companies within the same group to which the captive insurers belong.

The Government has seen that many large enterprises in Asia are keen to run their own captive insurance companies to insure against their business risks, and wishes to attract more enterprises to form such captive insurance companies in Hong Kong. The proposed measure, an initiative announced in the 2013-14 Budget, plans to give them the same tax concessions as those currently applicable to reinsurance companies.

The Secretary for Financial Services and the Treasury, Professor K C Chan, said that, “with a sound regulatory regime and a broad talent pool, Hong Kong is well positioned to establish itself as a center for captive insurance. Forming a cluster of captive insurers here will help the development of other related businesses, including reinsurance, legal and actuarial services.”

Professor Chan pointed out that this would reinforce Hong Kong’s status as a regional insurance hub, while making Hong Kong’s risk management services more diversified. The potential of Hong Kong as a hub for captive insurers has also been reinforced by a policy promulgated by the Chinese Government in June 2012, encouraging Mainland enterprises to form captive insurers in Hong Kong so as to enhance their risk management.

Subject to the passing of the Bill by the Legislative Council (LegCo), the tax concession measure will take effect from the year of assessment 2013-14.

Another provision of the Bill would raise the deduction ceiling for annual contributions made by employees or self-employed persons to recognized retirement schemes, including the Mandatory Provident Fund (MPF) Schemes, from the current level of HKD15,000 (USD1,935) to HKD17,500 for the year of assessment 2014-15, and to HKD18,000 for the year of assessment 2015-16 and onwards, subsequent to the increase of the maximum relevant income level under the MPF Schemes Ordinance from HKD25,000 per month to HKD30,000 per month, with effect from June 1, 2014.

The Bill will be presented to the LegCo for first reading on January 8, 2014. – *Courtesy tax-news.com*

Dar reviews half-yearly performance

As first half of this fiscal year completes on Tuesday, Finance Minister Ishaq Dar reviewed the state of economy for the second day on Saturday.

The meeting reviewed the fiscal position and the progress made in achieving the targets projected in the budget 2013-14.

Dar on Friday had reviewed the performance of the Federal Board of Revenue (FBR) to discuss ways and means to achieve the revenue targets. The meeting also discussed plan for withdrawal of SROs issued for concessions in income tax, customs and sales tax.

At today's meeting, Mr Ishaq Dar expressed satisfaction over the progress made so far and urged officials of the finance ministry as well as federal board of revenue to redouble their efforts to achieve the targets.

The meeting also discussed economic indicators including inflation, growth, and reforms carried out by the government.

The IMF at its first review of Pakistan's economic performance under a three-year programme on December 19, 2013 has called for a more ambitious approach to improve tax administration and eliminate tax loopholes.

IMF advised Pakistan that the low level of international reserves needs to be built. State Bank should use the policy tools at its disposal to boost reserves through policy rate adjustment, reserves purchases, and greater exchange rate flexibility.

The SBP will also need to address inflation once reserves begin to recover, for which greater independence of SBP was essential, the fund stated.

Secretary Finance Waqar Masood, Advisor Finance Rana Asad Amin, Chairman Federal Board of Revenue, Asif Bajwa and Chairman of Securities and Exchange Commission of Pakistan (SECP) Tahir Mahmood and officials of Pakistan Bureau of Statistics attended the meeting. – *Courtesy Dawn*

FBR collection showed growth of 17pc in July-Dec 2013

The Federal Board of Revenue (FBR) has collected Rs 937.45 billion during first quarter of current fiscal year reflecting a growth of 17 percent over the corresponding period of last year.

According to the figures compiled by the FBR it showed that Rs 794.483 billion were collected in the corresponding period of 2012-13. Figures showed that domestic taxes were recorded at Rs 835.9 billion from July-Dec 2013 as against of Rs 694.99 billion in the same period of last fiscal year. This shows an increased of 20.3 percent over the last year.

The collections under the head of Custom duty were Rs 101.46 billion during July-December current fiscal year as against Rs 99.85 billion, showing an improvement of 11 percent. The collection of Federal Excise Duty (FED) was Rs 54.713 billion during the period under review against Rs 50.691 billion in the last fiscal, reflecting an improvement of 7 percent.

Statistical data further revealed that the monthly collection in first 27 days of Dec 2013 was Rs 137.57 billion against Rs 108.99 billion in the same period of last fiscal year, depicting growth of 26.2 percent. During the period under review, direct tax collections were Rs 43.97 billion against Rs 31.89 billion, with an increase of 37.9 percent. Sales tax collection was Rs 71.35 billion as against Rs 56.73 billion, reflecting improvement of 25.8 percent.

According to the statistics, the collection of the Federal excise duty (FED) was Rs 8.37 billion against Rs 7.66 billion, depicting a growth of 9.3 percent. The customs duty collection was Rs 13.871 billion against Rs 12.701 billion, showing an improvement of 9.2 percent. – *International News Network*

Phasing out exemptions, tax concessions: Prime Minister to be briefed about plan today

A senior team of taxmen will brief Prime Minister Nawaz Sharif here on Monday (today) about the three-year plan to phase out exemptions and tax concessions of income tax, sales tax, customs and federal excise duty (FED) granted under a slew of Statutory Regulatory Orders (SROs).

Sources told Business eam of senior tax officials headed by FBR Chairman Tariq Bajwa would give a detailed briefing to Nawaz Sharif at the PM's House on Monday (today). In this regard, the Ministry of Finance has already analysed the FBR's plan on the withdrawal of various SROs. The items have been categorised for the withdrawal of exemptions under the phase-wise plan for sales tax, income tax and customs duty and the first phase will be implemented from April 1, 2014.

The committee on concessionary regime under SROs headed by FBR Chairman has already submitted its report to the Ministry of Finance.

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 the 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 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 the committee has also identified all such SROs that are creating distortions in 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.

Sources said the sensitivity of the issue to withdraw exemptions can be gauged from the fact that the matter would be taken up at the highest level of Prime Minister for approval. – *Courtesy Business Recorder*

Powers of SRO issuance: FTO rejects FBR's re-review plea

Review application filed by the FBR has been rejected by the Federal Tax Ombudsman (FTO) wherein it was prayed that the FTO was not justified in questioning the exercise of powers given by the statute and holding the FBR responsible for the issuance of the SRO 1003(I)/2011.

Sources told here on Sunday that the FBR's Re-Review petition against the order passed by the FTO in Review 12/2012 titled as Secretary Revenue Division, Islamabad Versus Waheed Shahzad Butt, Advocate High Court, Lahore has been rejected with the remarks that there is no provision for the second review in the FTO Ordinance, 2000, therefore, the same has been rejected. The FBR had earlier filed the first review before the former FTO Dr

Suddle which was rejected whereas now the second review has been filed by the FBR before the present FTO Abdur Rauf Chaudhry. The second review has also been rejected by the FTO office, they added.

Sources added that earlier complainant Waheed Butt, through C No 577/2011, approached the FTO and alleged that the act of issuance of Circular 06 of 2009 constituted 'maladministration' on the part of some functionaries of the FBR. The said circular was issued wrongly and with improper motives that resulted into loss of billions to the exchequer. In RA 12/2012 former FTO Dr Shoaib Suddle had ruled that the FBR act of issuing Circular 06 of 2009 and then inserting Clause 79 in the Second Schedule of the Income Tax Ordinance 2001 through SRO 1003(I)/2011 without approval of the Parliament speaks of improper motive, as also inefficiency, incompetence and ineptitude.

The FTO recommendation to take action against tax officials responsible for amending the taxation regime without prior approval of the Parliament, which caused a huge revenue loss to the national exchequer, remained unimplemented by the FBR even after the rejection of main review petition and re-review application filed by the former Member Appellate Tribunal Inland Revenue. In particular, the FTO had instructed the FBR to take immediate measures either to delete the Clause 79 from the Second Schedule of the Ordinance or to get it approved retrospectively by the Parliament. The FTO observed that FBR acted beyond its jurisdiction in exempting corporate sector service providers from minimum tax: sources added.

The FBR's act of inserting the said Clause in the Second Schedule without the Parliament's approval raises questions about its motives as well as its efficiency. Also as no amendment to Section 153 was approved by Parliament the insertion of Clause 79 in the Second Schedule changing the taxation regime was clearly an act without jurisdiction. Earlier in 2011 while deciding a complaint filed by Waheed Shahzad Butt, former FTO Dr Muhammad Shoaib Suddle directed the FBR to initiate appropriate action against officials who approved/issued Circular No 06 of 2009 dated 18.08.2009. The FBR subsequently filed a review petition titled "Secretary Revenue Division Versus Waheed Shahzad Butt" wherein the FTO again ruled that the sequence of Circulars and SROs leading to insertion of Clause 79 was wilful and mala fide. He also declared that the FBR has no authority to issue

SROs/Circulars which contradict the statutory provisions of tax laws.

Notifications for corporate income tax returns for Tax Year 2010 and Tax Year 2011 were in line with Circular No 3 that correctly explained the minimum tax levy and were against Circular No 6 and its distorted view of minimum tax. Statute was required to be read as a whole and not piecemeal. Rationale for levy of alternate minimum tax was clear. So many inflated expenses are booked by taxpayers when filing returns that the tax base is drastically eroded and tax yield plummets to an intolerably low level. The only way out of this predicament is to resort to measures like enactment of alternate minimum tax. After withdrawal of Circular No 6 of 2009, further Clarifications/SROs were issued by the FBR on 26.04.2011, 28.04.2011, 17.06.2011, 01.07.2011 and tax returns for corporate sectors for tax years 2010 and 2011: FTO order stated. – *Courtesy Business Recorder*

National Party to enforce agriculture tax in Balochistan: merger with Awami Party announced

The ruling National Party in Balochistan Saturday announced that the party will introduce land reforms by taxing agriculture sector as well as abolishing the decades old “Sardari” system in the province. Speaking at a news conference on the occasion of merger between Awami Party Pakistan and National Party, Senator Mir Hasil Khan Bizenjo said his party’s led coalition government would introduce land reforms and enforce agriculture tax in Balochistan.

He said poverty is a major problem of the country and the ruling class particularly the dictatorial regimes have played a key role in pushing more people towards poverty, unemployment and lawlessness. He said the provincial government led by Chief Minister Dr Abdul Malik will introduce reforms in the province, especially in the agriculture sector.

Bizenjo, who is senior vice president of the NP, regretted that the previous successive governments failed to bring land reforms, adding that had the reforms carried out in the past, the country would not have faced such problems today. He also announced that the provincial government would also bring an end to the feudal system and “Sardari Nizam” in Balochistan to put the province and its people on the right track to prosperity and peace.

He said people are facing various challenges such as the menace of terrorism, poverty and other problems due to the incapability of the rulers. "We don't claim to bring any tsunami in the province but efforts are being made to work for peace and prosperity in the province," he said. However, he maintained that the situation would remain the same until the concept of state was transformed from a 'security into a welfare state', adding that the country will not be in need of such a huge military when peace prevails in a welfare state.

Referring to lawlessness in the province, he said his party's led coalition government in Balochistan will take serious measures to end the extra-judicial killing, forced disappearances and kidnapping for ransom, a serious issue against which the provincial government has announced to stage sit-in outside Parliament House on January 12, 2014. He said the matter was of a serious nature, which requires strict measures to bring an end to the extra-judicial killings and abduction of Baloch people in the province. He held the subsequent military regimes responsible for creating troubles in Balochistan and pushing the Baloch people into extreme backwardness.

To a question, he said the provincial government is making efforts to reach out to separatists Baloch leaders, including Brahamdagh Bugti and others to bring them into the mainstream politics. However, he said the government cannot achieve the objective, if the other party refuses to hold talks.

The nationalist leader also backed trial of the military dictators, particularly Pervez Musharraf for subjugation of Constitution with an objective that no military dictator repeats the bitter history. "Military dictators like Zia-ul-Haq and Pervez Musharraf are responsible for the present problems of the country and its people...they must be given exemplary punishments," he added.

Responding to another question, he said some parties in the country are fuelling terrorism and sectarianism, which has put the nation into a difficult situation. He also backed creation of more provinces in the country. Earlier, Bizenjo said the Awami Party Pakistan merged into National Party after agreeing on a 10-point agenda including land reforms in the province. Under the agreement, he said efforts would be made to achieve the objective of a welfare state. He said negotiations for the merger have been going on for the last one year. He also invited people having liberal thinking to join National Party. – *Courtesy Business Recorder*

Agriculture tax harmonisation: MoF may take issue to CCI

The finance ministry is likely to take the issue of harmonisation of agriculture income tax in the provinces to the Council of Common Interests (CCI), it is learnt. Sources said Balochistan was requested to submit proposals/non-papers regarding harmonisation of agriculture tax policy in provinces, as non-papers from the other provinces have already been received. On receipt of non-paper from the government of Balochistan, all four non-papers would be shared with the Federal Board of Revenue.

When contacted, a senior official explained non-papers as informal written viewpoint of provinces on the subject matter. The non-papers together with feedback of the FBR would be discussed by provincial finance secretaries for updating the recommendations before finalisation of the proposal for CCI.

They said under the Article 9(2) of the Presidential Order No 5/2010 (7th NFC), provinces are required to initiate steps to effectively tax the agricultural sector. They said provinces were required to submit a non-paper on the subject as was decided in the sub-committee meeting constituted by the then federal finance minister and it was agreed in the meeting of the provincial finance secretaries held on the subject on 13.11.2012.

It was agreed that all the provincial finance secretaries would provide a non-paper to the Finance Division. The Finance Division has received non-papers from all the provincial governments except Balochistan. The additional finance secretary, Balochistan assured the last meeting of provincial finance secretaries that non-paper of his province was ready and would be forwarded to the Finance Division.

It was however, observed by all the provincial finance secretaries that certain clarifications were required by FBR in this regard. Therefore, all the non-papers will be consulted with the FBR for updating, if required. The finance ministry has reportedly asked the provincial governments to take steps for increasing tax revenue through continued efforts in the next fiscal year. The provinces were asked to provide a report to the Finance Division on measures taken to enhance the tax and non-tax revenues, broaden revenue base and to improve fiscal performance for inclusion in the next NFC report. – *Courtesy Business Recorder*

DHA Islamabad: FBR digs out non-NTN holder investors

The Directorate General of Intelligence and Investigation Inland Revenue, Federal Board of Revenue, has identified all investors, including both buyers and sellers, who have invested in DHA Islamabad, but doing business without obtaining any tax identifier - National Tax Number (NTN). Sources told here on Saturday that the directorate has completed a detailed exercise for taxing investment in the real estate sector-DHA Islamabad.

The agency has provided the details of all such un-documented buyers and sellers to the Commissioner Broadening the Tax-Base FBR House Islamabad for documentation of buyers and sellers in the real estate sector. The department would ensure that the investors must file their wealth statements disclosing details of their investment for documentation. According to the details, the Directorate General I&I-IR has initiated various projects aimed at digging out large scale tax evasion and non-compliance in the different sectors of the economy. One such project is the collection of information about investments in the real estate sector especially in prominent and expensive housing/commercial schemes.

As part of this exercise, information was collected about the investors (both sellers and purchasers) in the DHA Islamabad. The acquired information was cross-matched with the FBR data and cases of the investors not on the tax roll were filtered. List of such investors is available in the soft format for appropriate action by the Commissioner BTB FBR. Following aspects may be given due consideration to ensure proper incidence of tax in these cases: Firstly, the cases should be immediately brought on tax roll by initiating proceedings' under the relevant provisions of law.

Sources said that the sale/purchase value of the plots mentioned in the acquired information seems to be on the lower side and efforts are needed to ascertain the actual sales/purchase value. Enforcing wealth statements and obtaining bank statements could prove beneficial for achieving this end. This could also lay bare other investments/incomes of the investors in the DHA. The information contains particulars of both the sellers and purchasers of the plots and action is required to be initiated against both, sources added. –
Courtesy Business Recorder

C.No.4(11)ST-L&P/2011/175173-R Islamabad, the 27th December, 2013**SALES TAX GENERAL ORDER NO. 57/2013**Subject: **Amendment in STGO 17/2007 dated 13-09-2007 – withdrawal of facility of zero-rating on supply of gas.**

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

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

S #	S. No. in the STGO	Name of Unit	Registration No.	Reason
1	13	ABDULLAH SIZING	0803520816346	Non Filer
2	23	ADEEM DYING (PROP.M.HABIB) (OLD ADEEM HOS	0801600000819	Non Filer
3	49	AL HUSSAIN DYEING INDUSTRY	0800511100237	Non Filer
4	62	AL HABIB & SONS DYING	0302511100182	Non Filer
5	70	AL-HARAM INDUSTRIES	0902320001182	Non Filer
6	74	ALI DOST BUKRAM FACTORY (PROP.RAO ASGHAR)	0802600000491	Non Filer
7	83	AL-JAMEEL DYING	0301511102337	Non Filer
8	89	AL-KARAM TANNERIES (PVT) LTD.	0309411100228	Non Filer
9	104	AL-TAHIR DYING WORKS	0303511100582	Non Filer
10	106	AMAR TEXTILES (PRIVATE) LIMITED.	0301620000355	Non Filer
11	107	AMIN TEXTILE MILLS (PVT) LTD	0308520202364	Non Filer
12	110	ANAM WEAVING MILLS (PVT) LIMITED	0304520803419	Non Filer
13	132	ASMA DYEING INDUSTRIES	0305320000791	Non Filer
14	137	AWAN DYEING (PVT) LTD	0305620073746	Non Filer
15	144	AYESHA TEXTILE MILLS LTD. NO. 2	0308520204264	Non Filer
16	157	BALAJ TEXTILE MILLS (PVT) LTD	0304520201491	Non Filer
17	170	BILAL SIZING	0804520815264	Non Filer
18	176	BISVIL SIZING	0301570300137	Non Filer
19	185	CAPRI INDUSTRIES	0305520900182	Non Filer
20	187	CARNATION GARMENTS IND. (PVT) LTD	0304620005455	Non Filer
21	190	CHAND DYEING AND FINISHING MILLS	0803520000482	Non Filer
22	195	CHINA DYEING INDUSTRIES	0301511100682	Non Filer
23	199	CNC TEXTILES (PVT) LTD	0302520804346	Non Filer
24	210	CRESCENT COTTON PRODUCTS DIVISION OF CRES	0802520501191	Non Filer

25	214	CRYSTAL TEXTILE PROCESSING MILLS (PVT) LTD	0904511100546	Non Filer
26	215	CRYSTAL TEXTILE PROCESSING MILLS (PVT) LTD	0904511100546	Non Filer
27	218	D.S. CLOTHING (PVT) LTD	0304620005528	Non Filer
28	230	DAWOOD USMAN INDUSTRY	0403511102973	Non Filer
29	234	DIAMOND PROCESSING & TEXTILE INDUSTRIES	0302511101582	Non Filer
30	235	DIAMOND TEXTILE	0405511106182	Non Filer
31	242	DR. FRIGZ INTERNATIONAL (PVT) LTD,	0990999961937	Non Filer
32	245	E.N FABRICS (PVT) LIMITED	1390999912146	Non Filer
33	259	ENDEAVOR (PRIVATE) LIMITED	0302620000591	Non Filer
34	261	EVER GREEN TOTAL BUSINESS CO	0304320000546	Non Filer
35	273	FALCON FINISHING AND DYEING PLANT	0801320000864	Non Filer
36	277	FATIMA ENTERPRISES LTD. ((Merged with 040	0402520201573	Non Filer
37	280	FAZAL IBRAHIM SILK MILLS (PVT) LTD	0301511103573	Non Filer
38	314	H.M SHAFI TEXTILES (PVT) LTD.	0803520900982	Non Filer
39	315	H.M TEXTILE INDUSTRIES (PVT) LTD	0301511102746	Non Filer
40	324	HAIDER SULTAN TEXTILES PROCESSIGN INDUSTRY	0803520000637	Non Filer
41	343	HILAL TANNERIES LTD.,	0910411100173	Non Filer
42	353	HUSSAIN DYEING & PRINTING INDUSTRIES (PVT)	0405511101964	Non Filer
43	361	IBRAR HOSIERY BLEACHING	0801320000455	Non Filer
44	402	JET ERA TEXTILE MILLS LIMITED	0306520806046	Non Filer
45	403	JOORY AND JORRY THREAD WORKS	0801510900428	Non Filer
46	417	KAUSAR TEXTILE INDUSTRIES PVT LTD	0405511102537	Non Filer
47	435	KOHINOOR LOOMS LIMITED	0304520807391	Non Filer
48	443	LAND MARK ENTERPRISES	0305511103382	Non Filer
49	447	LEASEE SARGODHA SIZING SERVICE	0801520846064	Non Filer
50	463	MADINA DYEING	0301511100273	Non Filer
51	469	MAHAD THREAD	0304520900273	Non Filer
52	470	MAJID SIZING INDUSTRIES	0801520501364	Non Filer
53	476	MARHABA INDUSTRY,	0903511100864	Non Filer
54	477	MARHABA INDUSTRY,	0903511100864	Non Filer
55	494	MGM CORPORATION (PVT) LTD	1200520200382	Non Filer
56	497	MIAN PROCESSIGN MILLS (PVT) LTD	0405511103291	Non Filer
57	526	MUNIR INDUSTRIES	0801520885573	Non Filer
58	527	MUSHTAQ TEXTILE PRINTING INDUSTRIES (PVT)	0890999934155	Non Filer
59	536	NI APPARELS INTERNATIONAL	0304610301882	Non Filer
60	542	NASEEM ENTERPRISES (PVT) LIMITED	0407520504319	Non Filer

61	555	NEW KARACHI DYEING	0405511103528	Non Filer
62	556	NEW LIGHT HOSIERY (PVT) LTD	0801620001882	Non Filer
63	557	NEW SATTAR DYING,	0902511100382	Non Filer
64	558	NEW SALMAN SIZING IND	0801520846891	Non Filer
65	562	NEWAGE PRIVATE LIMITED	0309620082464	Non Filer
66	563	NEWAGE PRIVATE LIMITED	0309620082464	Non Filer
67	590	PARUMA INTERNATIONAL PVT LTD	0801520912473	Non Filer
68	592	PENTAGON TEXTILE PVT. LTD.	0305610300137	Non Filer
69	608	PUNJAB PRINTING MILLS (PVT) LTD	0308511100464	Non Filer
70	609	PUNJAB SIZING INDUSTRIES	0804520807591	Non Filer
71	611	QAIS TEXTILES (PVT) LTD	0301620001673	Non Filer
72	614	QAYYUM RASHID TEXTILE (PVT) LTD	0403511106937	Non Filer
73	621	RAFI COTTON INDS. (PVT) LTD. [merged with	0407520500764	Non Filer
74	629	RANA HOSIERY & TEXTILE MILLS (PVT) LTD	0404580100282	Non Filer
75	634	RECTO INDUSTRIES (PVT) LTD	0304610300719	Non Filer
76	638	REHMAN FARID FABRICS (PVT) LTD	0405511117446	Non Filer
77	666	S S SAFETY INDUSTRIES	0800611600182	Non Filer
78	670	SADAF KNITWEAR (PVT) LTD	0302620052564	Non Filer
79	695	SHABBIR HOSIERY	0801621700319	Non Filer
80	697	SHADMAN COTTON MILLS LIMITED	0308520206655	Non Filer
81	728	SIGMA KNITTING MILLS LTD.	0301620000273	Non Filer
82	748	SUMAIRA TEXTILES (PVT) LIMITED,	0890999137937	Non Filer
83	751	SUN STAR KNITWEAR	0302510900464	Non Filer
84	753	SUPERIOR FACTRICS (PVT) LTD	0310520800128	Non Filer
85	803	YAQOOB INDUSTRY	0301411100128	Non Filer
86	804	YASIN SIZING INDUSTRIES	0801520835091	Non Filer
87	810	YOUSUF TEXTILE MILLS LTD.	0205520200655	Non Filer
88	813	ZAHID JEE FABRICS (LTD),	0404511104455	Non Filer
89	816	ZAINAL TEXTILES (PVT) LTD	0302620001582	Non Filer
90	834	INAYAT SIZING INDUSTRIES	0801520851819	Non Filer
91	848	LABAAS TEXTILE LTD.	0302620045728	Non Filer
92	855	KHALID SAEED LESSEE NEW GOLDEN SIZING	0802520802728	Non Filer
93	859	REHMAN SIZING	0800520807128	Non Filer
94	866	BAOO JEE TEXTILES	0800590004328	Non Filer
95	944	HASSAN SIZING INDUSTRIES (ON LEASE)	0801520835828	Non Filer
96	955	AL-VERA ENTERPRISES (PVT) LTD.	0308511102282	Non Filer
97	977	USMAN SIZING	0800520801919	Non Filer
98	983	FATIMA SPORTS WEAR	0801621700491	Non Filer
99	992	WEAVEX SIZING INDUSTRY	2400520824373	Non Filer

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100	1012	NEW AL-JAMIA SIZING	0801520895973	Non Filer
101	1013	QAMAR COTTON INDUSTRIES	0303300500119	Non Filer
102	1090	NEW KASHMIR SIZING INDUSTRIES	0803520839864	Non Filer
103	6	A. L. M. SURGICARE	0905901805937	RTO Recommendation
104	186	CARE & CURE SURGICO	0905999977819	
105	262	EXAMPLE IMPEX	0905950682728	
106	263	F.I. NAZIR INDUSTRIES	0905999934346	
107	405	K.T. SURGICO	0905901815346	
108	533	NAYYAR INDUSTRIES (PVT) LTD.	0910570300164	

2013 TRI 2115 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
CHENNAI “B” BENCH, CHENNAI

Dr. O.K. Narayanan, Vice President and
V. Durga Rao, Judicial Member

FACTS/HELD

Section 40(a)(ia) TDS Disallowance: View in favour of the assessee should be followed

1. The assessee paid an amount without deducting TDS. The AO held that as there was no TDS, the deduction for the amount could not be allowed u/s 40(a)(ia). However, the CIT(A) reversed the AO on the ground that the word “payable” in s. 40(a)(ia) did not apply to amounts that had already been “paid” during the year. On appeal by the department to the Tribunal HELD dismissing the appeal:

There is a judicial controversy on whether s. 40(a)(ia) applies to amounts that have already been “paid” or it is confined to amounts that are “payable” as at the end of the year. The Special Bench in *Merilyn Shipping and Transports 16 ITR (Trib) 1 (Vizag)* and the Allahabad High Court in *Vector Shipping Services* have taken the view that s. 40(a)(ia) applies only to amounts remaining “payable” at the end of the previous year and does not apply to amounts already “paid” before the close of the relevant previous year. However, the Calcutta High Court in *Crescent Export Syndicates & Md. Jakir Hossain Mondal* and the Gujarat High Court in *Sikandarkhan N.Tunvar* have taken a contrary view that even amounts already “paid” have to be disallowed u/s 40(a)(ia). In such circumstances, the rule of Judicial Precedence demands that the view favourable to the assessee must be adopted as held by the Supreme Court in *CIT vs. Vegetable Products Ltd 88 ITR 192*. Following the said fundamental rule declared by the Supreme Court, the judgment of the Allahabad High Court in *Vector Shipping* which is in favour of the assessee has to be followed and it has to be

CL. 2116 *ITA No.2076(Mds)/2012 & C.O. No.155(Mds)/2013* (Trib. Ind.)

held that disallowance u/s 40(a)(ia) applies only to amounts “payable” and not to amounts “paid”.

Order accordingly.

ITA No.2076(Mds)/2012 (Assessment Year : 2009-10) & C.O. No.155(Mds)/2013 in ITA No. 2076(Mds)/2012.

Heard on: 18th September, 2013.

Decided on: 18th September, 2013.

Present at hearing: Guru Bhashyam, IRS, JCIT, for Appellant. J. Prabhakar, C.A., for Respondent.

JUDGMENT

Per Dr. O.K. Narayanan:– (Vice President)

The appeal is filed by the Revenue and the cross objection by the assessee. The relevant assessment year is 2009-10. The appeal and the cross objection are directed against the order of the Commissioner of Income-tax(Appeals)-I at Madurai, dated 21-8-2012 and arise out of the assessment completed under section 143(3) of the Income-tax Act, 1961.

2. In the present case, the Assessing Officer has disallowed the claim of certain expenditure made by the assessee under section 40(a)(ia) on the ground that tax has not been deducted at source and paid to the credit of Government of India. But, the Commissioner of Income-tax(Appeals) deleted the disallowance stating that the amount ‘payable’ alone would attract the disallowance under section 40(a)(ia) and the amount already paid would not attract the above provision. The Revenue is aggrieved and, therefore, this second appeal before us.

3. The Income-tax Appellate Tribunal, Visakhapatnam- Special Bench, had held in the case of *Merilyn Shipping and Transports vs. Addl. CIT*, 16 ITR (Trib) 1, that the provisions of section 40(a)(ia) do apply only to those amounts remained payable by the end of the previous year and the said provisions do not apply to the amounts already paid by the assessee before the close of the relevant previous year. In that way, the order of the Commissioner of Income-tax(Appeals) in the present case is conducive to the decision of the Special Bench. The very same view has been upheld by the Hon’ble Allahabad High Court in the case of *CIT vs. M/s. Vector Shipping Services (P) Ltd.* The Hon’ble Allahabad High Court, through their judgment dated 9-7-2013 in ITA No.122 of 2013, has held that the decision of the Special Bench of the Tribunal in the case of *Merilyn Shipping and Transports vs. Addl. CIT* is good law. In that way, the present appeal filed by the Revenue is liable to be dismissed.

4. But, at the same time, the learned Joint Commissioner of Income-tax appearing for the Revenue has relied on three other judgments rendered by the Hon’ble Calcutta High Court and Gujarat High Court, in which their Lordships have held that the law stated by the Special Bench

of the Tribunal in the case of Merilyn Shipping & Transports vs. Addl.CIT was not acceptable. The Hon'ble Calcutta High Court, through their judgment delivered on 3rd April, 2013 in ITA No.20 of 2013 in the case of *CIT vs. Crescent Export Syndicates*, has held that the order of the Special Bench of the Tribunal in the case of *Merilyn Shipping & Transports vs. Addl. CIT* is not acceptable. The same view has again been repeated by the Hon'ble Calcutta High Court in the case of *CIT vs. Md. Jakir Hossain Mondal*, through their judgment delivered on 4th April, 2013 in ITA No.31 of 2013. The Hon'ble Gujarat High Court in the case of *CIT vs. Sikandarkhan N.Tunvar*, 33 Taxman.com.133, has also held that the disallowance under section 40(a)(ia) does not distinguish between amounts "paid" and "payable". In view of the above judgments of two High Courts, the learned Officer contended that the appeal of the Revenue needs to be allowed.

5. We find that the judgment of the Hon'ble Allahabad High Court is in favour of the assessee. At the same time, we find that the orders of the Calcutta High Court and the Gujarat High Court are against the assessee. In such circumstances, the rule of Judicial Precedence demands that the view favourable to the assessee must be adopted, as held by the Hon'ble Supreme Court in the case of *CIT vs. Vegetable Products Ltd.*, 88 ITR 192. Following the above fundamental rule declared by the Hon'ble Supreme Court, we have to follow the judgment of the Hon'ble Allahabad High Court, which is in favour of the assessee. Accordingly, we hold that the disallowance under section 40(a)(ia) applies only to those amounts 'payable' and not to those amounts 'paid'. Accordingly, we uphold the order of the Commissioner of Incometax (Appeals) in the present case. The appeal filed by the Revenue is liable to be dismissed.

6. The cross objection filed by the assessee is rejected as not pressed. It is also time barred.

7. In result, the appeal filed by the Revenue and the cross objection filed by the assessee, both are dismissed.

Order pronounced in the open court at the time of hearing on Wednesday, the 18th of September, 2013 at Chennai.

INCOME TAX APPELLATE TRIBUNAL
CHENNAI "A" BENCH, CHENNAI

Dr. O.K. Narayanan, Vice President and
S.S. Godara, Judicial Member

Appeal partly allowed.

I.T.A.No.1951/Mds/12 (Assessment year : 2009-10)

Heard on: 3rd December, 2013.

Decided on: 9th December, 2013.

Present at hearing: Shaji P. Jacob, Addl. CIT, for Appellant. None, for Respondent.

JUDGMENT

Per S.S. Godara:– (Judicial Member)

This appeal filed by the Revenue for assessment year 2009-10, is directed against the order of the Commissioner of Income-tax (Appeals)-XII, Chennai, dated 23.7.2012, passed in Appeal No.553/2011-12, in proceedings under section 143(3) of the Incometax Act, 1961 (in short the 'Act').

2. In the course of hearing, the Revenue submits that its grievance is in two folded i.e the CIT(A) has erred in directing the Assessing Officer to assess the rental income on property taken on lease by the assessee and thereafter in sub-letting it on commercial basis under the head 'income from house property' from 'business income'; as done by the Assessing Officer. The other plea of the Revenue is that the CIT(A) has wrongly deleted the disallowance for non-deduction of TDS u/s 40(a)(ia) of the Act amounting to Rs. 41,000/-.

3. None has come present on behalf of the assessee inspite of RPAD notice dated 3.10.2013. Hence, it is proceeded ex-parte.

4. The assessee is a 'firm' engaged in architecture business. On 18.9.2009, it had filed its return disclosing income of Rs. 3,69,76,790/- which was 'summarily' processed.

5. In the course of 'scrutiny', the Assessing Officer found the assessee to have declared income from house property by first taking on lease the properties and thereafter sub-letting them. In the assessment order dated 30.12.2011, he held that since the assessee was not owner of the property, in view of section 269UA(f), its contention that the receipts in question had to be declared as income from 'house property' could not be accepted. In Assessing Officer's opinion, the assessee was involved in business of leasing properties. In this manner, he considered the rent paid of Rs. 33,85,467/- and treated balance amount of Rs. 90,02,160/- as business income. Out of this, since the assessee had already offered a sum of Rs. 63,01,512/-, the remaining sum of Rs. 27,00,648/- stood added in the returned income.

6. In assessee's appeal, the CIT(A) has relied upon the order of the 'tribunal' for assessment year 2007-08 holding similar receipt as 'income from house property' and deleted the addition.

Therefore, the Revenue has raised the instant ground.

7. We have heard the Revenue and perused the case file. So far as the findings under challenge of the CIT(A) in principle are concerned, in the absence of any distinction on facts pointed out by the Revenue vis-à-

vis facts of assessment year 2007-08 , we see no reason to adopt a different approach in the impugned assessment year. At the same time, we find force in the consequential argument of the Revenue that since present is an issue of head of income i.e the Assessing Officer had treated the receipts in question as 'business income' and the CIT(A) under the head 'income from house property', the Assessing Officer has to examine the case afresh for the purpose of appropriate computation. In our view, this consequential argument deserves to be accepted since at the time of computing the income under the head 'house property' the case of the assessee has to be considered for the purpose of deductions u/s 24 of the Act. So, we restore this ground to the Assessing Officer for limited purpose of computing the assessee's income in view of our above discussion.

8. Now, we come to the second ground of the Revenue regarding disallowance u/s 40(a)(ia) for non-deduction of TDS. In the course of assessment, the Assessing Officer noticed the assessee to have made professional payments without deduction of TDS. Therefore, he added the impugned sum of Rs. 41,000/- in its income.

9. In lower appellate proceedings, the CIT(A) has taken into consideration the case law of *Merilyn shipping & Transports vs. Addl. CIT* 20 Taxman.com 244) (Vizag SB) and held that the disallowance could only be made qua the amount which was payable as on 31.3.2009 and not qua that stood paid. In light aforesaid, the issue stands restored to the file of the Assessing Officer.

10. Before us, the sole argument of the Revenue is that 'paid' and 'payable' distinction drawn by the CIT(A) whilst issuing aforesaid directions to the Assessing Officer on the basis of Special Bench decision (supra) is no longer sustainable in view of the decision of the Hon'ble Calcutta High Court in the case of *CIT vs Md. Jakir Hossain Mondal* dated 4.4.2013 in I.T.A.No. 31 of 2013 and Gujarat high court's decision in the case of *CIT vs Sikandarkhan N. Tunvar*, 33 Taxman.com 133. In this backdrop, we find that the co-ordinate bench of the 'tribunal' in I.T.A.No. 2076/Mds/2012 dated 18.9.2013 in the case of *ITO vs M/s Theekathir Press* [authored by one of us, Dr.O.K.Narayanan, VP] has held that since there is variation of decisions on 'paid' and 'payable' issue in view of the fact that the hon'ble Calcutta high court and Gujarat high court have decided the question in favour of the Revenue and the hon'ble Allahabad high court in the case of *CIT vs M/s Vector shipping Services (P) Ltd* has proceeded in favour of the assessee, the case law of hon'ble supreme court in the case of *CIT vs Vegetable Products Ltd.*, 88 ITR 192 would apply so as to decide the issue in assessee's favour. The relevant findings read as follows:

“2. In the present case, the Assessing Officer has disallowed the claim of certain expenditure made by the assessee under section 40(a)(ia) on the ground that tax has not been deducted at source

and paid to the credit of Government of India. But, the Commissioner of Income-tax (Appeals) deleted the disallowance stating that the amount 'payable' alone would attract the disallowance under section 40(a)(ia) and the amount already paid would not attract the above provision. The Revenue is aggrieved and, therefore, this second appeal before us.

3. The Income-tax Appellate Tribunal, Visakhapatnam-Special Bench, had held in the case of *Merilyn Shipping and Transports vs. Addl. CIT*, 16 ITR (Trib) 1, that the provisions of section 40(a)(ia) do apply only to those amounts remained payable by the end of the previous year and the said provisions do not apply to the amounts already paid by the assessee before the close of the relevant previous year. In that way, the order of the Commissioner of Incometax(Appeals) in the present case is conducive to the decision of the Special Bench. The very same view has been upheld by the Hon'ble Allahabad High Court in the case of *CIT vs. M/s. Vector Shipping Services (P) Ltd.* The Hon'ble Allahabad High Court, through their judgment dated 9-7-2013 in ITA No.122 of 2013, has held that the decision of the Special Bench of the Tribunal in the case of *Merilyn Shipping and Transports vs. Addl. CIT* is good law. In that way, the present appeal filed by the Revenue is liable to be dismissed.

4. But, at the same time, the learned Joint Commissioner of Income-tax appearing for the Revenue has relied on three other judgments rendered by the Hon'ble Calcutta High Court and Gujarat High Court, in which their Lordships have held that the law stated by the Special Bench of the Tribunal in the case of *Merilyn Shipping & Transports vs. Addl. CIT* was not acceptable. The Hon'ble Calcutta High Court, through their judgment delivered on 3rd April, 2013 in ITA No.20 of 2013 in the case of *CIT vs. Crescent Export Syndicates*, has held that the order of the Special Bench of the Tribunal in the case of *Merilyn Shipping & Transports vs. Addl. CIT* is not acceptable. The same view has again been repeated by the Hon'ble Calcutta High Court in the case of *CIT vs. Md. Jakir Hossain Mondal*, through their judgment delivered on 4th April, 2013 in ITA No.31 of 2013. The Hon'ble Gujarat High Court in the case of *CIT vs. Sikandarkhan N. Tunvar*, 33 Taxman.com.133, has also held that the disallowance under section 40(a)(ia) does not distinguish between amounts "paid" and "payable". In view of the above judgments of two High Courts, the learned Officer contended that the appeal of the Revenue needs to be allowed.

5. We find that the judgment of the Hon'ble Allahabad High Court is in favour of the assessee. At the same time, we find that the orders of the Calcutta High Court and the Gujarat High

Court are against the assessee. In such circumstances, the rule of Judicial Precedence demands that the view favourable to the assessee must be adopted, as held by the Hon'ble Supreme Court in the case of *CIT vs. Vegetable Products Ltd.*, 88 ITR 192. Following the above fundamental rule declared by the Hon'ble Supreme Court, we have to follow the judgment of the Hon'ble Allahabad High Court, which is in favour of the assessee. Accordingly, we hold that the disallowance under section 40(a)(ia) applies only to those amounts 'payable' and not to those amounts 'paid'. Accordingly, we uphold the order of the Commissioner of Income-tax(Appeals) in the present case. The appeal filed by the Revenue is liable to be dismissed."

In view thereof, we also hold that the CIT(A) has rightly directed the Assessing Officer to examine the assessee's claim on the basis of 'paid' and 'payable' issue as stated hereinabove. So, the relevant grounds of the Revenue are decided in favour of the assessee.

11. The Revenue's appeal is partly allowed for statistical purposes.

Order pronounced on Monday, the 09th of December, 2013, at Chennai