# Daily Tax News (DTN)

**Huzaima & Ikram**
*April 26, 2012*

Daily Tax News (DTN) is a special email service from Tuesday to Friday, part of your subscription, aims at keeping you informed about changes taking place in tax laws in real time. It also contains in-depth articles, analyses and changes taking place all over the world. On Saturday evening we send Weekly Tax Journal (WTJ) online which you can read till Monday at your convenience

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Kind regards

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**Public companies: 0.01 percent CVT imposed on purchase of shares**

The federal government has imposed 0.01 percent capital value tax (CVT) on purchase of shares of a public company listed on a registered stock exchange and source of investment in the shares would not be asked up to June 30, 2014 where amount would remain invested for a period of 120 days.

Explaining the Finance (Amendment) Ordinance, 2012, sources told here on Wednesday that the Finance (Amendment) Ordinance, 2012 has amended the Income Tax Ordinance 2001 to introduce a new Schedule ie Eight Schedule (Rules for computation of capital gains on listed securities).

The announcement of the revised CGT regime has already shown a positive trend in the stock exchanges.

The revised capital gains tax (CGT) regime would improve documentation and collection from the investment made in the stock exchanges.

The Federal Board of Revenue (FBR) had only collected Rs 418 million from the capital gains tax (CGT) during 2011, reflecting a low collection as compared to the projected revenue.

Under the revised CGT regime, stock market would attract new investment which would further increase revenue collection.

Through the Presidential Ordinance, the government has imposed CVT at the rate of 0.01% on the purchase of shares of a public company listed on a registered stock exchange in Pakistan.

The CVT on stock market transactions was abolished in the past and a lower rate of 0.01 percent has been levied on purchase of shares, official said.

As per Finance (Amendment) Ordinance, 2012, where a person has made any investment in the shares of a public company traded on a registered stock exchange in Pakistan from the date of coming into force of this Schedule till June 30, 2014, enquiries as to the nature and sources of amount invested shall not be made provided that the amount remains invested for a period of 120 days in the manner as may be prescribed.

The tax on capital gains, if any, has duly been discharged in the manner laid down in this Schedule and a statement of investments is filed with the Commissioner along with the return of income and wealth statement for the relevant tax year within the due date as provided in section 118 of this Ordinance and in the manner prescribed.

The amount of investment shall be calculated in the prescribed manner, excluding market value of net open sale position in futures and derivatives, if such sale is in a security that constitutes the said investment.

Where a person has made any investment in the listed securities, enquiries as to the nature and source of the amount invested shall not be made for any investment made prior to the introduction of this Schedule, provided that a statement of investments is filed with the Commissioner along with the return of income and wealth statement for tax year 2012 within the due date as provided in section 118 of this Ordinance and in the manners prescribed and the amount remains invested for a period of 45 days up to June 30, 2012, in the manner as may be prescribed.

According to the Finance (Amendment) Ordinance, 2012, capital gains on disposal of listed securities shall be computed and determined under this Schedule and tax thereon shall be collected and deposited on behalf of taxpayers by National Clearing Company of Pakistan Limited (NCCPL) in the manner prescribed.

The NCCPL shall develop an automated system.

The Central Depository Company of Pakistan Limited shall furnish information as required by NCCPL for discharging obligations under this Schedule.

The NCCPL shall issue an annual certificate to the taxpayer on the prescribed form in respect of capital gains subject to tax under this Schedule for a financial year.

Provided that on the request of a taxpayer or if required by the Commissioner, NCCPL shall issue a certificate for a shorter period within a financial year.

Every taxpayer shall file the certificate along with the return of income and such certificate shall be conclusive evidence in respect of the income under this Schedule.

The NCCPL shall furnish to the Board within thirty days of the end of each quarter, a statement of capital gains and tax computed thereon in that quarter in the prescribed manner and format.

Pakistan Revenue Automation Limited (Pral), a company incorporated under the Companies Ordinance, 1984 or any other company or firm approved by the Board and any authority appointed under section 209 of this Ordinance, not below the level of an Additional Commissioner Inland Revenue, shall conduct regular system and procedural audits of NCCPL on quarterly basis to verify the implementation of this Schedule and rules made under this Ordinance.

The capital gains computed under this Schedule shall be chargeable to tax at the rate applicable in Division VII of Part I of the First Schedule of the Income Tax Ordinance 2001, Finance (Amendment) Ordinance, 2012 added. – *Courtesy Business Recorder*

**Carrying goods to Afghanistan: government to charge $2500 toll tax per Nato container**

The government would charge as many as US $2500 toll tax per Nato container carrying goods to Afghanistan.

Minister of State for Communication Dost Muhammad Mazari Wednesday stated this during question-hour session in the National Assembly.

He said that a report about claims of damaging assessment of $1.5 billion due to Nato transport has been submitted to the concerned Standing Committee of the National Assembly.

He said that the proposal regarding recovery of estimated claims of damages and levy of tax as infrastructure usage charges has been submitted to the ministries of Foreign Affairs and Defence.

He said that National Highway Authority (NHA) network connects Pakistan to Afghanistan via three routs having total length of 404km.

He said that the toll rates implemented on NHA network are charged on vehicles plying on roads connecting with Afghanistan.

Answering a supplementary question of the member, the Minister said that NHA network connecting Karachi Port with Afghanistan has been dilapidated considerably due to frequent use by overloaded vehicles of Nato/Isaf/American transit freight over the years.

He said that the estimated rehabilitation cost is $1.5 billion.

He said that the issue has been highlighted at various forums, including Standing Committees of the Parliament, Ministry of Foreign Affairs and Ministry of Defence.

Answering another question, the minister said that toll revenue of Rs 34.583 billion was collected from 2007 to 2011.

He said that an amount of Rs 30.168 billion was utilised during 2007 to 2011.

He said that a total of Rs 11.1 billion was collected in 2010-11, while Rs 8 billion was utilised in this year.

He further said that toll revenue is dedicated purely for operation and maintenance of national/highway network. – *Courtesy Business Recorder*

## Voluntary pension schemes offer unique tax benefits

Where investing in pension schemes has the most pivotal advantage of helping you secure your and your dependants' future, there is another that normally skips the eye - Tax Benefits.

Voluntary Pension Schemes (VPS) are customised pension planning investment vehicles regulated by the Securities & Exchange Commission of Pakistan and offered by selected Asset Management Companies.

"Given the current economic scenario, it is very important that every person starts saving for their retirement from an early age", says Mir Muhammad Ali (CFA) CEO of UBL Fund Managers.

"The sooner you start, the more time for your savings will have to grow".

UBL Fund Managers is amongst the leading Asset Management Companies in Pakistan that is licensed by the SECP to offer VPS to clients.

In addition to helping individuals plan for their retirement, these schemes also offer unique tax benefits that are not available with traditional investment schemes.

One of these benefits is called the 'Tax Credit'.

A tax credit is a discount or refund that one can claim on their Income Tax when they invest in a pension scheme.

The amount of tax credit that an individual can claim depends on his or her annual income, annual tax rate, the amount of investment made and the current age of the investor.

For example, a person who is over 55 years of age can claim a tax credit up to 50 percent of his annual tax bill - thus reducing his income tax deductions by half.

Those who are in their early 40's can reduce their tax bill by up to 20 percent.

The tax-efficient design of Voluntary Pension Schemes makes them an attractive investment vehicle for anyone who wants to invest for their future.

In addition to receiving a tax credit, "VPS also offer tax exemption at the time of withdrawal", adds Ali.

One can withdraw 50 percent of their retirement savings from a pension scheme without any tax deduction.

On the other hand, if you were to keep this money in a saving scheme offered by a bank, a 10 percent withholding tax would be deducted. – *Courtesy Business Recorder*

## Profit after tax of Lotte Pakistan reduces to Rs 151.111 million

The profit after tax of Lotte Pakistan PTA Limited has reduced to Rs 151.111 million in the quarter ended March 31, 2012 as compared to Rs 2,485.552 million earned in the corresponding quarter in 2011.

The board of directors of the company in its meeting held on April 24, 2012 declared that the company's earning per share stood at Re 0.10 in the period under review against Rs 1.64 in the same period last year.

According to the financial results sent to Karachi Stock Exchange, the company's revenue declined to Rs 13.404 billion in this quarter against Rs 15.951 billion in the same quarter a year back.

The cost of sales increased to Rs 13.134 billion against Rs 12.090 billion.

The company's profit before taxation decreased to Rs 237.804 million in the first quarter of 2012 against Rs 3,695.719 million in the same quarter in 2011. – *Courtesy Business Recorder*

## Undisclosed assets, income: experts underscore need for introducing amnesty scheme before

Tax experts have suggested to the Federal Board of Revenue to announce an amnesty scheme before upcoming budget (2012-13) for the wealthy persons to legalise their undisclosed assets and income at a minimum rate of 1.50 to 2 percent under the powers available as per section 120A of the Income Tax Ordinance 2001.

Experts told here on Wednesday that the FBR is legally authorised to announce amnesty scheme under the provisions of the section 120A of the Income Tax Ordinance 2001.

It has been proposed that an Amnesty Scheme may be launched as early as possible to provide window to all those businesspersons to document their undocumented wealth.

Such arrangement is permissible in the terms of Section 120A of the Income Tax Ordinance 2001.

At present, businesspersons are documenting their wealth through Foreign Exchange Remittances and paying around 2.5 percent to 3 percent as remittance cost.

If such arrangements may be launched during April-May 2012 with specific features, it will indubitably help documenting our economy besides boosting our economic growth.

The proposed tax for the legalisation of the un-disclosed assets and income should be 1.50 percent in April 2012; May, 2 percent; June 2012, 3 percent; July 2012, 4 percent; August 2012, 5 percent and September 2012 the rate of tax should be 6 percent.

Tax expert has further proposed that all undocumented wealth disclosed vide this proposed scheme should be given protection under various provisions of Income Tax Ordinance and policy of no questioning should be pursued.

Moreover, the important issues of Anti-Money Laundering provisions eg terrorism and/or Drug Money should be dealt accordingly and an affidavit apropos should be taken.

It has been further proposed that the imposition of stipulations like CNIC and NTN (SRO 191) should be made mandatory.

The filling of income tax returns should also be made compulsory and proper advertisement of this scheme should be made to attract more people, tax expert added Budget. – *Courtesy Business Recorder*

## Sindh-related services: FBR to notify FED exemption shortly

In a move to sort out long standing issues with Sindh, the Federal Board of Revenue has agreed to notify the exemption of Sindh-related services from Federal Excise Duty shortly, it is reliably learnt on Wednesday.

Well-informed sources inside the Sindh Revenue Board told that the officials of FBR had prepared the draft of FED exemption notification which would be issued soon.

Sources said the FBR has drafted the said notification as exemption of Sindh-related services from FED because, it would continue to collect FED on services from other provinces including Punjab, Khyber Pakhtunkhawa and Balochistan.

They said that after the passage of 18th Amendment, the collection of sales tax on services became the domain of provinces and the FBR had to withdraw from the collection of FED on services from the provinces.

The FBR had not withdrawn from FED.

It is still collecting this duty from Punjab, Khyber Pakhtunkhawa and Balochistan because these provinces had not set up their separate tax collection bodies or empowered previous taxation institutions to collect sales tax on services, sources added.

Sindh has won the administrative race and established its own tax collection body - Sindh Revenue Board - which started its work since July 2011, they said.

The SRB authorities had asked FBR authorities for withdrawal of FED from Sindh-related services but it could not be obliged, they said.

Recently, a high-level meeting was held in this regard at the FBR head office on April 23rd, in which FBR officials agreed with the SRB officials to exempt the Sindh-related services from the FED and the draft of this notification was also prepared in the meeting, they said.

The meeting was attended by two members of SRB - Mumtaz Ahmed and Imtiaz Barakzai - and from FBR the member Inland Revenue, Chief Inland Revenue, GM Pral and others attended the meeting, they said.

The meeting lasted for about two hours and both sides discussed the longstanding issues including exemption of Sindh-related services from FED, transfer of services tax amount collected by the FBR mistakenly and others, they said.

The FBR officials also agreed to transfer the amount of services taxes collected from Sindh mistakenly to the exchequer of Sindh government, they added.

On the second day of the meeting, the SRB officials had telephoned the FBR officials for issuance of a notification regarding FED and they promised that the said notification would be issued shortly after fulfilling some formalities, sources concluded. – *Courtesy Business Recorder*

### Tax recovery notices issued in interim order cases

Large Taxpayers Unit (LTU), Karachi has started recovery of outstanding taxes in cases where stay orders, granted by higher courts, have been lingering on for more than six months, official sources said on Wednesday.

LTU Karachi, the biggest revenue collection arm of the Federal Board of Revenue (FBR), has estimated that an amount of around Rs40 billion is stuck up in litigation and in most of the cases stay orders have not been vacated for years, the official added.

The unit issued notices in pursuance of the FBR directives seeking recovery of due taxes from taxpayers following observations made by the Chief Justice of Pakistan at a recently-concluded International Judicial Conference in Islamabad.

Under clause (4A) of Article 199 of the Constitution, an interim order passed by a high court in a case relating to assessment or collection of public revenues ceases to have effect on the expiration of period of six months and the high court is required to finally decide such matters within the said period from the date on which the interim order is made.

"However, it is observed that despite the aforesaid constitutional clog, such matters continue to linger on for longer periods of time on one pretext or the other without any extension having been granted by the competent court," a press statement issued earlier by the FBR quoting Chief Justice of Pakistan, Justice Iftikhar Muhammad Chaudhry.

"As a matter of fact, in view of the above constitutional provision, no extension at all can be granted by any court. Since the interim order ceases to have effect on expiration of a period of six months from the date of passing of the order, the concerned authorities are well within their right to seek enforcement of the judgment/order, against which any such interim order is passed after the expiry of the aforesaid period of six months," the statement added. LTU Karachi prior to this, approached Chief Justice Sindh High Court (SHC) Justice Musheer Alam to apprise him about huge amount stuck up and it sought early resolution of cases.

The unit also apprised the Chief Justice SHC that the taxpayers are taking advantage of continuous stay orders granted by higher courts, the official said.

According to the data made available, the LTU Karachi has estimated that Rs3.5 billion are stuck in those cases where orders were passed under Section 122 (5A) of the Income Tax Ordinance, 2001, while another Rs11.5 billion have not been recovered despite the fact that notices have been issued. A sum of Rs8 billion is stuck in income tax references, where Rs400 million accrue from oil-related cases.

Litigation related to sales tax and federal excise duty amount to Rs3 billion, according to the data.

LTU, Karachi has sent notices mainly to oil exploration companies stating that stays granted that lingering on for over six months are automatically vacated. – *Courtesy The News*

**FBR proposes slight adjustment in existing taxation regime**

The Federal Board of Revenue (FBR) has not proposed any new taxes in the budget, but only a slight adjustment in the existing taxation regime, sources said on Wednesday.

According to an official document made available, the tax-to-GDP ratio will decline from 13 percent to 12.6 percent of GDP in the Federal Budget 2012/13, whereas it will further decrease in the next couple of years.

Of the total estimated revenue collection of Rs3,033 billion for the next fiscal year, the document revealed that the revenue body will register a nominal rise of 0.4 percent in the revenue collection from Rs1,952 billion to Rs2,338 billion with a GDP growth of 4.5 percent for 2012/13.

The two other sources, non-tax revenue and levies and surcharges, will also show a fall to reach Rs695 billion against the estimates of Rs780 billion last year, it added.

Attributing continuing challenges to the economy, the official document also highlighted that the tax policy and administration reform to mobilise domestic resources taking tax-to-GDP ratio to at least 15 percent will hardly be achieved not only during this fiscal year, but also in the coming years.

However the consolidated tax ratio will increase from 10.4 percent in the current year to 12 percent in the next three years, whereas the tax-to-GDP ratio is estimated to rise from 9.3 percent to 10.3 percent over the next three years, according to the document.

Similarly, the provincial tax effort is expected to increase from 0.4 percent to 1.2 percent over the medium-term, it said, adding that the provincial governments are likely to collect tax revenue of Rs200 billion and non-tax revenue of Rs75 billion. In the last year’s provincial budget, Rs154 billion with the tax revenue of Rs89 billion and non-tax revenue of Rs65 billion was collected, it said. – *Courtesy The News*

**No.2(1)/2012-Pub, Islamabad, the 24th April, 2012.–** The following Ordinance promulgated by the President is hereby published for general information:–

**Ordinance No. III of 2012**
**AN**
**ORDINANCE**

*further to amend certain fiscal laws*

**WHEREAS** it is expedient to further amend certain fiscal laws and matters for the purpose hereinafter appearing;

**AND WHEREAS** the National Assembly and Senate are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

**NOW, THEREFORE**, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance, namely:–

1. **Short title and commencement.–** (1) This Ordinance may be called the Finance (Amendment) Ordinance, 2012.

(2) It shall come into force at once.

2. **Amendment of Finance Act, 1989 (Act V of 1989).–** In the Finance Act, 1989 (Act V of 1989), in section 7,–

(i) in sub-section (1), after the word "thereon", the words, brackets, commas and figures ", and shares of a public company, listed on a registered stock exchange in Pakistan by a person denied in section 80 of the Income Tax Ordinance, 2001 (XLIX of 2001)" shall be inserted;

(ii) in sub-section (2), after clause (F), the hallowing shall be added, namely:–

| | | |
|---|---|---|
| "(F) | purchase of shares of a public company listed on a registered stock exchange in Pakistan | 0.01% of the purchase value"; and |

(iii) in sub-section (4), in the last proviso, for the words "modaraba certificates or any instrument of redeemable capital or shares of a public company from the resident persons", the words "shares of a public company" shall be substituted.

**3. Amendment of Ordnance XLIX of 2001.–** In the Income Tax Ordinance, 2001 (XLIX of 2001), the following further amendment shall be made, namely:–

(1) In section 2, after clause (35A), a new clause shall be inserted, namely:–

"(35AA) "NCCPL" means National Clearing Company of Pakistan Limited, which is a company incorporated under the Companies Ordinance, 1984 (XLVII of 1984) and licensed as "Clearing House" by the Securities and Exchange Commissioner* of Pakistan;";

(2) In section 37A, in sub-section (1), after the word "year", occurring for the first time, the comma and words ", other than a gain that is exempt from tax under this Ordinance" shall be inserted;

(3) after section 100A, the following new section, shall be inserted, namefy:–

"**100B Special provision relating to capital gain tax.–** (1) Capital gains on disposal of listed securities and tax thereon, subject to section 37A, shall be computed, determined, collected and deposited in accordance with the rules laid down in the Eighth Schedule.

(2) The provisions of sub-section (1) shall not apply to the following persons or class of persons, namely:–

(a) a mutual fund;

(b) a banking company, a non-banking finance company, and an insurance company subject to tax under the Fourth Schedule;

(c) a modaraba;

(d) a "foreign institutional investor" being a person registered with NCCPL as a foreign institutional investor; and

(g) any other person or class of persons notified by the Board.";

(4) in section 233A,–

(a) in sub-section (1),–

(I) in clause (b), after the semicolon, at the end, the word "and" shall be added; and

(ii) clause (c) shall be omitted; and:

(b) in sub-section (2), for the brackets and letter "(c)", the brackets and letter "(b)" shall substituted;

(5) In the First Schedule,–

(i) in Part I, Division VII, in the Table, in column (1),–

* Apparently the intended word is "Commission".

(a) against serial number 1 in column (4) for the existing rates, the following shall be substituted:–

"10%
10%
10%
10%
17.5%"

(b) against serial number 2, column (4), for the existing rates, the following shall be substituted:-

"7.5%
8%
8%
8%
9.5%
10%"; and

(c) serial number 3, and the entries relating thereto in columns (2), (3) and (4), shall be omitted: and

(ii) Part IV, in Division IIA, clause (iii), shall be omitted; and

(6) after the SEVENTH SCHEDULE, the following new Schedule shall be added, namely:–

**"EIGHTH SCHEDULE**
**[section 100B]**

**RULES FOR THE COMPUTATION OF CAPITAL GAINS ON LISTED SECURITIES**

**1. Manner and basis of computation of capital gains and tax thereon.–** (1) Capital gains on disposal of listed securities, subject to tax under section 37A, and to which section 100B apply, shall be computed and determined under this Schedule and tax thereon shall be collected and deposited on behalf of taxpayers by NCCPL in the manner prescribed.

(2) For the purpose of sub-rule (1), NCCPL shall develop an automated system.

(3) Central Depository Company of Pakistan Limited shall furnish information as required by NCCPL for discharging obligations under this Schedule.

(4) NCCPL shall issue an annual certificate to the taxpayer on the prescribed form in respect of capital gains subject to tax under this Schedule for a financial year:

Provided that on the request of a taxpayer or if required by the Commissioner, NCCPL shall issue a ertificate for a shorter period within a financial year.

(5) Every taxpayer shall file the certificate referred to in sub-rule (4) along with the return of income and such ertificate shall be conclusive evidence in respect of the income under this Schedule.

(6) NCCPL shall furnish to the Board within thirty days of the end of each quarter, a statement of capital gains and tax computed thereon in that quarter in the prescribed manner and format.

(7) Capital gains computed under this Schedule shall be chargeable to tax at the rate applicable in Division VII of Part I of the First Schedule.

**2. Sources of Investment.–** (1) Where a person has made any investment in the listed securities, enquiries as to the nature and source of the amount invested shall not be made for any investment made prior to the introduction of this Schedule, provided that –

(a) a statement of investments is filed with the Commissioner along with the return of income and wealth statement for tax year 2012 within the due date as provided in section 118 of this Ordinance and in the manners prescribed: and

(b) that the amount remains invested for a period of forty-five days upto 30th of June 2012, in the manner as may be prescribed.

(2) where a person has made any investment in the shares of a public company traded at a registered stock exchange in Pakistan from the date of coming into force of this Schedule till June 30, 2014, enquiries as to the nature and sources of amount invested shall not be made provided that –

(a) the amount remains invested for a period of one hundred and twenty days in the manner as may be prescribed;

(b) tax on capital gains, if any, has duly been discharged in the manner laid down in this Schedule; and

(c) a statement of investments is filed with the Commissioner along with the return of income and wealth statement for the relevant tax year within the due date as provided in section 118 of this Ordinance and in the manner prescribed.

(3) For the purpose of this rule amount of investment shall be calculated in the prescribed manner, excluding market value of net open sale position in futures and derivatives, if such sale is in a security that constitutes the said investment.

3. **Certain provisions of this Ordinance not to apply.–** The respective provisions for collection and recovery of tax, advance tax and deduction of tax at source laid down in the Parts IV and V of Chapter X shall not apply on the income from capital gains subject to tax under this Schedule and these provisions shall apply in the manner as laid down in the rules made under this Ordinance. except where the recovery of tax is referred by NCCPL to the Board in terms of rule 6(3).

4. **Payment of tax collected by NCCPL to the Board.–** The amount collected by NCCPL on behalf of the Board as computed in the manner laid down under this Schedule shall be deposited in a separate bank account with National Bank of Pakistan and the said amount shall be paid to the Board along with interest accrued thereon on yearly basis by July 31st next following the financial year in which the amount was collected.

5. **Persons to whom this Schedule shall not apply.–** If a person intends not to opt for determination and payment of tax as laid down in this Schedule, he shall fi1e an irrevocable option to NCCPL after obtaining prior approval of the Commissioner in the manner prescribed. In such case the provisions of rule 2 shall not apply.

5. **Responsibility and obligation of NPL.–** (1) Pakistan Revenue Automation Limited (PRAL), a company incorporated under the Companies Ordinance, 1984 (XLVII of 1984) or any other company or firm approved by the Board and any authority appointed under section 209 of this Ordinance, not below the level of an Additional Commissioner Inland Revenue, shall conduct regular system and procedural audits of NCCPL on quarterly basis to verify the implementation of this Schedule and rules made under this Ordinance.

(2) NCCPL shall implement the recommendations, if any, of the audit report under sub-rule (1), as approved by the Commissioner, and make adjustments for short or excessive

deductions. However, no penal action shall be taken against NCCPL on account of any error, omission or mistake that has occurred from application of the system as audited under sub-rule (1).

(3) NCCPL shall be empowered to refer a particular case for recovery of tax to the Board in case NCCPL is unable to recover the amount of tax.

**7. Transitional Provisions.–** In respect of tax year 2012, for the period commencing from coming into force of this Schedule till June 30, 2012, the certificate issued by NCCPL under rule 1(4) shall be the basis of capital gains and tax thereon for that period.

**2012 PTR 915 (H.C. Del.)**

HIGH COURT OF NEW DELHI

## Sanjiv Khanna and R.V. Easwar, JJ.

***SREI Infrastructure Finance Ltd.***
***v.***
***The Income Tax Settlement Commission & Ors.***

**FACTS/HELD**

1. **Section 50B: "Slump Sale" need not be a "Sale". All slump transfers are covered**
2. The assessee entered into a scheme of arrangement u/s 391-394 of the Companies Act, 1956 pursuant to which it transferred its project finance business and assets based financing business to another company for a lumpsum consideration of Rs. 375 lakhs. The assessee filed a settlement application in which it claimed that the said *consideration on transfer of the project finance business was not chargeable to tax as it was not by way of "sale" and there was no cost of acquisition for the same*. However, the Settlement Commission that the said transfer, though effected through an order of the Court was a *"slump sale" and was chargeable to tax u/s 50B*. The assessee filed a Writ Petition to challenge the Settlement Commission's order. HELD by the High Court dismissing the Petition:

   > The assessee's argument that a "transfer" under a scheme of arrangement u/s 391-394 of the Companies Act is not a "slump sale" for purposes of s. 50B is not acceptable. S. 50B was inserted to supercede decisions which held that a slump sale (i.e. transfer of business as a going concern) was not taxable for want of cost of acquisition. The term 'slump sale' is defined in s. 2(42C) to mean the "transfer" of an undertaking as a result of a "sale". The use of the word 'transfer' in s. 2(42C) is significant and **any type of "transfer" which is in nature of slump sale i.e. when lump sum consideration is paid without values being assigned to individual assets and liabilities is covered**

**by s. 2(42C) and s. 50B**. This is the reasonable, plausible and natural grammatical meaning which has to be given to the definition of 'slump sale'. It is **not correct to construe the word 'slump sale' to mean that it applies to 'sale' in a narrow sense** and as an antithesis to the word 'transfer' as used in s. 2(47). The intention of the legislature was to plug in the gap and tax slump sales and not to leave them out of the tax net. The term 'slump sale' has been used in the enactment to describe a particular and specific type of transfers called slump sales. **The use of the word 'sale' in the term 'slump sale' does not narrow down the concept of 'transfer' as defined and understood in s. 2(47)**. All transfers in the nature of 'sales' i.e. 'slump sales' are covered by s. 2 (42C).

*Petition dismissed.*

**Writ Petition (Civil) No. 1592/2012.**
**Heard on: 20th March, 2012.**
**Decided on: 30th March, 2012.**
**Present at hearing: Vikas Singh, Sr. Advocate with Sashi Tulsiyan and Amrita Narayan, Advocates, for Petitioner. Himanshu Bajaj, Advocate for Respondent No. 3/UOI.**

## JUDGMENT

*Sanjiv Khanna, J.–*

The petitioner, SREI Infrastructure Finance Ltd. is a public limited company engaged in project financing through term loans and leasing in specified sectors. For the assessment year 2009-10, the petitioner had disclosed loss of more than Rs.76 crores in their return. The book loss computed under Section 115JB of the Income Tax Act, 1961 (Act, for short) was more than Rs.72 crores. No return was filed for the assessment year 2010-11.

2. On 19th July, 2010, the petitioner filed an application under Section 245C(1) of the Act, before the Settlement Commission, for the assessment years 2009-10 and 2010-11, disclosing additional income, under MAT of Rs.111,08,00,000/- for the assessment year 2009-10, which was earlier not disclosed in the return which was pending scrutiny before the Assessing Officer and an income of Rs.126,35,41,333/- under MAT for the assessment year 2010-11.

3. On 23rd July, 2010, the Settlement Commission passed an order under Section 245D(1) admitting the application. During the course of the proceedings, the Commissioner a filed report under Section 245D(2B) of the Act and Rule 9 of the Income Tax Settlement Commission (Procedure)

Rules, 1997. Reply and clarifications by both the petitioner and the Commissioner were examined and considered by the Settlement Commission.

4. On 16th December, 2011, the Settlement Commission passed the final order determining and deciding various aspects and questions which were raised. In the present writ petition, we are only concerned with one aspect i.e. taxability of Rs. 375 lacs under Section 50B of the Act as capital gains on 'slump sale' paid under the Scheme of Arrangement to the petitioner by its subsidiary SREI Infrastructure Development Finance Ltd ("SIDFL", for short).

5. The Settlement Commission has held that the consideration of Rs.375 lacs received by the petitioner from SIDFL on transfer of its project finance business and assets based financing business, including its shareholding in SREI Insurance Broking Pvt. Ltd ("SIBPL", for short) was taxable under the Section 50B of the Act as 'slump sale'. Settlement Commission has also computed the taxable capital gains under Section 50B of the Act.

6. The contention of the petitioner is that the 'transfer' under the Scheme of Arrangement is not a sale under Section 50B of the Act. The Scheme of Arrangement was sanctioned by the High Court of Calcutta under Section 391 to 394 of the Companies Act, 1956 and is statutory in nature and character. It is pleaded that Section 50B of the Act has no applicability as the 'transaction' was under the Scheme of Arrangement and the same is not a 'slump sale' as contemplated under Section 2(42C) of the Act. The petitioner claims that Section 2(42C) deals with limited category/type of transactions i.e. sales, which are construed as a 'slump sale' and the broader and wider definition of the term 'transfer' as defined under Section 2(46) is not applicable to "slump sales".

7. During the course of the hearing, the petitioner had relied upon *Madhu Intra Limited and Anr., VAT Automation Pvt. Ltd. and Stuti Developers Pvt. Ltd. and Ors. vs. Registrar of Companies and Ors.*, [2006] 130 Comp. Cases 510 (Cal.), *Sadanand S. Varde and Ors. vs. State of Maharashtra and Ors.*, (2001) 247 ITR 609 (Bom) and J.K. (Bombay) (P) *Ltd. vs. New Kaiser-I-Hind Spinning and Weaving Co. Ltd.*, (1970) 40 Comp. Cases 689 (SC).

8. In order to appreciate the contentions, we deem it appropriate to reproduce Sections 2(47), 2(42C) and Section 50 B of the Act which read:–

> "2(42C) "slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales:

Explanation 1.- For the purposes of this clause, “undertaking” shall have the meaning assigned to it in Explanation 1 to clause (19AA):

Explanation 2.- For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities;

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2(47) "**transfer**", in relation to a capital asset, includes,–

(i) the sale, exchange or relinquishment of the asset; or

(ii) the extinguishment of any rights therein; or

(iii) the compulsory acquisition thereof under any law; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or

(iva) the maturity or redemption of a zero coupon bond; or

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property:

Explanation.- For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

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**Section 50B. Special provision for computation of capital gains in case of slump sale.**--(1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place:

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form along with the return of income, a report of an accountant as defined in the Explanation below sub-section (2) of section 288 indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

Explanation 1.–For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account : Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

Explanation 2.–For computing the net worth, the aggregate value of total assets shall be,–

(a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43;

(b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, nil; and

(c) in the case of other assets, the book value of such assets."

9. Section 50B was inserted in the Act vide the Finance Act, 1999 w.e.f 1st April 2000, in view of the decisions that 'slump sales' were not taxable under the capital gain provisions because it was not possible to compute cost of acquisition. It was held that when computation cannot be made in the absence of cost of acquisition, then the charging section itself would not be applicable. [see *PNB Finance Ltd. vs. Commissioner of Income Tax*, (2008) 307 ITR 75 (SC)].

10. Slump sale, as then understood, meant transfer of business as a going concern, and therefore, it was not possible to determine the actual cost namely the cost of acquisition even though, in a given case, it might be a generated asset [see *CIT vs. Artex Manufacturing Co.* [1997] 227 ITR 260 (SC). In such cases, it was not possible to break-up and compute capital gains on the assets sold, either individually or in entirety.

11. The term 'slump sale', which has now been specifically defined in Section 2(42C) of the Act, means transfer of one or more undertakings as a result of sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. The use of the word 'transfer' in said section is significant. The term 'transfer' is used in said section is with reference to the transaction in the nature of 'slump sale'. Thus any type of "transfer" which is in nature of slump sale i.e. when lump sum consideration is paid without values being assigned to individual assets and liabilities are covered by the definition clause 2(42C) and then by Section 50B of the Act. This is the reasonable, plausible and natural grammatical meaning which has to be given to the definition clause 'slump sale'. It is not correct to construe and regard the word 'slump sale' to mean that it applies to 'sale' in a narrow sense and as an antithesis to the word 'transfer' as used in Section 2(47) of the Act. The intention of the legislature was to plug in the gap and tax slump sales and not to leave them out of the tax net. The term 'slump sale' has been used in the enactment to describe a particular and specific type of transfers called slump sales. Use of word 'sale' in the term 'slump sale' does not and is not intended to narrow down the concept of 'transfer' as defined and understood in Section 2(47) of the Act. All transfers in nature of 'sales' i.e. 'slum sales' are covered by the definition clause 2 (42C) of the Act. The word 'transfer' as defined and understood in Section 2(47) of the Act is wide. It is an inclusive definition of wide import. It includes sale, exchange or relinquishment, extinguishment of any right in an asset, compulsory acquisition under the law etc. We may note and record here that the learned Senior Advocate appearing for the petitioner did not contest and submit that the transaction in question is not covered by the word 'transfer' as defined in Section 2(47) and the contention raised was that Section 50B read with Section 2(42C) is only applicable to "sale" in a narrow sense and not to 'transfer' under Section 2(47) of the Act.

12. The term 'slump sale' has been defined to mean a transfer of a business undertaking or a business for a lumpsum consideration with all its assets and liabilities, without values being assigned to individual assets/liabilities. The said term has no other significance and we should not read into and understand that the word 'sale', used in the term 'slump sale', as a cause/reason to give a restrictive meaning to "slump sale", i.e. it can only apply to "sales" in a narrow sense and not to "transfers" under Section 2(47). This is apparent as when we read the proviso and sub-

section (1) to Section 50B together and in a harmonious way, it is clear that it applies to all types of "transfers" that can be categorized as a "slump sale". Sub-section (2) to Section 50B of also refers to transfer of an undertaking or division by way of sale i.e. "slump sale" and prescribes the mode of computing and calculating capital gains on such transactions.

13. We may refer to the judgment of the Supreme Court in *CIT, Cochin vs. Grace Collis (Mrs.) and Ors.*, (2001) 3 SCC 430, wherein it has been held as under:–

> "**15**. We have given careful thought to the definition of "transfer" in Section 2(47) and to the decision of this Court in *Vania* case. In our view, the definition clearly contemplates the extinguishment of rights in a capital asset distinct and independent of such extinguishment consequent upon the transfer thereof. We do not approve, respectfully, of the limitation of the expression "extinguishment of any rights therein" to such extinguishment on account of transfer or of the view that the expression "extinguishment of any rights therein" cannot be extended to mean the extinguishment of rights independent of or otherwise than on account of transfer. To so read the expression is to render it ineffective and its use meaningless. As we read it, therefore, the expression does include the extinguishment of rights in a capital asset independent of, and otherwise than on account of transfer.
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> **16**. This being so, the rights of the assessees in the capital asset, being their shares in the amalgamating company, stood extinguished upon the amalgamation of the amalgamating company with the amalgamated company. There was, therefore, a transfer of the shares in the amalgamating company within the meaning of Section 2(47). It was, therefore, a transaction to which Section 47(vii) applied and, consequently, the cost to the assessees of the acquisition of the shares of the amalgamated company had to be determined in accordance with the provisions of Section 49(2), that is to say, the cost was deemed to be the cost of the acquisition by the assessees of their shares in the amalgamating company."

14. In the said case, the assessee had received equity shares in the amalgamated company for shares of the amalgamating company. The amalgamating company ceased to function and its business, assets and liabilities were taken over by the amalgamated company. The shares received of the amalgamated company under the Scheme of Arrangement were subsequently sold by the assessee at Rs.107.50 against the face value of Rs.100/-. The Assessing Officer took the cost of acquisition as the cost paid to acquire the shares in the amalgamating company by applying Section 49(2) read with Section 47(vii) of the Act. The contention of the

assessee, however, was that no capital gain tax was leviable because what was sold where the shares in the amalgamated company and it was submitted that there was no provision under the Act to determine the value of the said shares. There was no "transfer" when the shares were issued in the amalgamated company under the statutory scheme under Sections 391- 394 of the Companies Act, 1956. The assessee had relied on an earlier decision of the Supreme Court in *CIT vs. Rasiklal Maneklal (HUF)*, (1989) 2 SCC 454, in which Section 12-B of the Income Tax Act, 1922, was interpreted. The Supreme Court held that the decision in the *Rasiklal's* case (supra) would not be applicable in view of the expanded definition of the term 'transfer' in Section 2(47) which includes extinguishment of any right in a capital asset. Reference was made to another decision of the Supreme Court in *Vania Silk Mills (P) Ltd. vs. CIT*, (1991) 4 SCC 22, wherein the term 'transfer' in Section 2(47) has been interpreted as under:–

> "11. It is true that the definition of "transfer" in Section 2(47) of the Act is inclusive, and therefore, extends to events and transactions which may not otherwise be "transfer" according to its ordinary, popular and natural sense. It is this aspect of the definition which has weighed with the High Court and, therefore, the High Court has argued that if the words "extinguishment of any rights therein" are substituted for the word "transfer" in Section 45, the claim or compensation received from the insurance company would be attracted by the said section. The High Court has, however, missed the fact that the definition also mentions such transactions as sale, exchange etc. to which the word "transfer" would properly apply in its popular and natural import. Since those associated words and expressions imply the existence of the asset and of the transferee, according to the rule of *noscitur a sociis*, the expression "extinguishment of any rights therein" would take colour from the said associated words and expressions, and will have to be restricted to the sense analogous to them. If the legislature intended to extend the definition to any extinguishment of right, it would not have included the obvious instances of transfer, viz., sale, exchange etc. Hence the expression "extinguishment of any rights therein" will have to be confined to the extinguishment of rights on account of transfer and cannot be extended to mean any extinguishment of right independent of or otherwise than on account of transfer."

15. The decision of Bombay High Court in *Sadanand ]S. Varde's* case (supra) was in a public interest writ petition and a question had arisen whether provisions of Chapter XX C of the of the Act were applicable when a scheme of amalgamation was sanctioned by a Company Court.

The High Court observed that the amalgamation order passed by the High Court cannot be challenged in a collateral proceedings. The High Court considered the scheme of Chapter XX-C and the term 'transfer' which was specifically defined for the purpose of said Chapter in clause (f) to Section 269UA. It was held that the said chapter was enacted for compulsory purchase, when a property was sold by making significant undervaluation with the intention of evading tax. It was held that the definition clause i.e. Section 269UA(f) would apply to only contractual agreements and not statutory transfers. Possibly it can be submitted that statutory transfers do not have an element of understatement of sale consideration. We are not required to examine and go into the said question/ issue in the present case and express no opinion. We are not required to interpret and apply Section 269UA(f) in the present case.

16. The judgment of the Calcutta High Court in *Madhu Intra Ltd.* (supra) deals with the question of payment of stamp duty under the Indian Stamps Act 1899, upon sanction of a Scheme of Re-Construction and/or Amalgamation and whether the sanction order amounts to 'conveyance' as defined under Section 2(10) of the Indian Stamps Act, 1899. As noticed above, in the present case, we are only concerned with definition of 'transfer' as defined under Section 2(47) of the Act which is a very wide and broad definition. The issue in question and ratio of the decision in *Madhu Intra Ltd.* (supra) are not apposite to the issue in question.

17. It may be appropriate here to notice the decision of the Supreme Court in *Hindustan Lever vs. State of Maharashtra*, (2004) 9 SCC 438, which arose under the Bombay Stamp Act, 1958. A question arose whether an order sanctioning the amalgamation of two companies under Section 394 read with Section 391 of the Companies Act, 1956, was an instrument within the meaning of Section 2(1) of the Bombay Stamp Act, 1958 in view of the insertion of clause (iv) to Section 2(g) which expanded the definition of term 'conveyance' to include every order made by the High Court under Section 394 of the Companies Act, 1956 in respect of amalgamation or reconstruction of the Companies etc. The contention of the petitioners therein was that amalgamation under Section 394 of the Companies Act, 1956, was not an order simpliciter of transfer of property by an act of parties with imprimatur of the Court. It was an order of the Court after judicial scrutiny. Such an order was not an act of the parties and constitutes a decree and, therefore, not a conveyance. The contention was rejected in the following words by the Supreme Court:–

> "**18**. It is difficult to subscribe to the view propounded by the learned counsel for the appellants. As stated earlier, the order of amalgamation is based on a compromise or an arrangement arrived at between the two companies. No individual living being owns the company. Each shareholder is the owner of the company

to the extent of his shareholding. By enacting Sections 391 to 394 a method has been devised to give effect to the will of the prescribed majority of shareholders/creditors. Even in the absence of individual agreement by all the shareholders and creditors the decision of the majority prescribed in Section 391(2) binds all the creditors and the shareholders. The scheme after being sanctioned by the court binds all its creditors, members and shareholders including even those who were opposed to the scheme being sanctioned. It binds the company as well. While exercising its power in sanctioning the scheme of amalgamation, the court is to satisfy itself that the provisions of statute have been complied with. That the class was fairly represented by those who attended the meeting and that the statutory majority was acting bona fide and not in an oppressive manner. That the arrangement is such as which a prudent, intelligent or honest man or a member of the class concerned and acting in respect of the interest might reasonably take. While examining as to whether the majority was acting bona fide, the court would satisfy itself to the effect that the affairs of the company were not being conducted in a manner prejudicial to the interest of its members or to public interest. The basic principle underlying such a situation is none other than the broad and general principle inherent in any compromise or settlement entered into between the parties, the same being that it should not be unfair, contrary to public policy and unconscionable or against the law.

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**30**. A document creating or transferring a right is an instrument. Can it be said that an order effectuating the transfer is a document? The answer has been given in the affirmative by this Court in *Haji Sk. Subhan vs. Madhorao* wherein it was held that the question is whether the word "document" includes a decree of the court. It was held that there was no good reason why a decree of the court, when it affects the proprietary rights and is in relation to them should not be included in this expression. This question more pointedly arose before this Court in *Ruby Sales and Services (P) Ltd*. In that case in a suit for specific performance the property was conveyed to the vendee by a consent decree. The question arose whether the consent decree is an instrument and liable to be stamped. The consent decree contained a recital to the effect that "this decree does operate as the conveyance from the defendants in favour of the plaintiffs in respect of the said property more particularly described in Exhibit A to the plaint". The Court held that: (SCC p. 535, para 11)

> "*11*. There is no particular pleasure in merely going by the label but what is decisive is by the terms of the document. It is clear from the terms of the consent decree that it is also an 'instrument' under which title has been passed over to the appellants-plaintiffs. It is a live document transferring the property in dispute from the defendants to the plaintiffs."
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> The aforesaid decree was based on an agreement between the parties. So is the case with an order under Section 394 of the Companies Act which is also based on an agreement between the transferor company and the transferee company.
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> xxx
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> **32**. In view of the aforesaid discussion, we hold that the order passed by the Court under Section 394 of the Companies Act is based upon the compromise between two or more companies. Function of the court while sanctioning the compromise or arrangement is limited to oversee that the compromise or arrangement arrived at is lawful and that the affairs of the company were not conducted in a manner prejudicial to the interest of its members or to public interest, that is to say, it should not be unfair or contrary to public policy or unconscionable. Once these things are satisfied the scheme has to be sanctioned as per the compromise arrived at between the parties. It is an instrument which transfers the properties and would fall within the definition of Section 2(1) of the Bombay Stamp Act which includes every document by which any right or liability is transferred. The State Legislature would have the jurisdiction to levy stamp duty under Entry 44 List III of the Seventh Schedule of the Constitution of India and prescribe rates of stamp duty under Entry 63 List II."

18. Decision of the Supreme Court in *J.K. (Bombay) (P) Ltd.* (supra) is on the general proposition as to the statutory nature of the scheme which is sanctioned under Sections 391-394 of the Companies Act, 1956. The said decision is hardly relevant for interpreting the term 'transfer' as defined in Section 2(47) of the Act, which as noted above, is applicable. There is another reason why this decision should not be applied. The Act i.e. Income Tax Act, 1961 was enacted to tax the income or gains made by an assessee. The Companies Act, 1956, on the other hand serves, and is intended to serve a different purpose and, therefore, when a scheme under Sections 391-394 of the Companies Act, 1956 is sanctioned by the Court, it is treated as a binding statutory scheme because the scheme has to be implemented and enforced. This cannot, or is not, a ground to escape tax on 'transfer' of a capital asset under and as per provisions of the Act.

19. We record that no other contention or issue was raised by the petitioner during the course of the arguments. We also record that the petitioner has not relied upon Section 47 of the Act before us and we have not expressed any opinion on the said Section.

20. For the reasons stated above, the contentions raised by the petitioner are rejected and the writ petition is dismissed. No costs.