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STATUTES

SRB-3-4/Legal/2012/5027, dated May 23, 2011.

SRB-3-4/8/2012, dated June 06, 2011.

SECP Circular No. 19 of 2012, dated June 11, 2012.

SECP Circular No. 20 of 2012, dated June 11, 2012.

S.R.O. 727(I)/2012, dated June 12, 2012.

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Shrinking share of direct taxes

by
Huzaima Bukhari & Dr. Ikramul Haq

The dismal share of income tax in overall collection of taxes during the last many decades testifies to the lack of judicious balance between direct and indirect taxes, resulting in declining tax-to-GDP ratio, huge budgetary gap and above all pushing millions of Pakistanis below the poverty line. The non-collection of income tax from the rich is the root cause of many distortions in our tax system. Over 70% share of indirect taxes in overall collection of Federal Board of Revenue (FBR) proves beyond any doubt that the very purpose of redistribution of wealth as the main object of taxation is being defeated and nullified.

Overwhelming reliance on indirect taxation [even under the garb of income taxation through presumptive tax regime on a number of transactions] without evaluating its impact on the economy and life of the poor masses is a serious cause for concern for independent analysts. According to official figures, the contribution of income tax [although major portion of it is now composed of indirect levies or expenditure taxes) as percentage of GDP is continuously declining; it was merely 2.4% in 2010-11, 2.5% in 2009-10, 2.6% in 2008-09, 2.9% in 2007-08, 3.0% in 2006-07, 3.01% in 2005-2006, whereas in 2004-2005 it was 3.15% [*YEAR BOOKS 2004-05 to 2010-11* of FBR and *Economic Surveys*].

In the face of declining direct tax-to-GDP ratio, Mr. Hafeez Shaikh and FBR officials are making tall claims about "impressive" (sic) 25% increase in taxes that was mainly due to extraordinary surge in imports—contribution of POL products alone stood at 43%. A brazen misrepresentation of figures has been made in *Economic Survey 2012* concealing the real sources of tax collections. In budget documents as well, taxes collected at source on goods, contracts, supplies and rent, which being full and final discharge, have been shown as direct taxes. In substance, these are indirect levies, even in some cases, amounting to encroachment on the rights of provinces e.g. sales tax on survives.

There exists a mammoth gap in collection of income tax in Pakistan. According to Pakistan Telecommunication Authority (PTA), there were 118.3 million mobile users as on 31 March 2012. A huge population, not less than 60 million (if we exclude multiple and inactive subscribers), pays both 10% income tax and 19.5% sales tax on mobile use, but only 1.3 million file income tax returns—if statements filed for presumptive taxes are excluded, the actual number is below 750,000. Majority of mobile users may not have taxable income (Rs 350,000, raised to 400,000 from tax year 2013) yet they are burdened with undue liability. On the contrary, majority of rich people just pay a fraction of income tax (withheld at source) on actual taxable incomes without bothering to file even income tax returns—in 2011 less than 250,000 non-salaried return

filers admitted that their annual income was more than Rs. one million! This is what confirms and speaks volumes about the weakness and incompetence of the tax administration.

If out of total population of 180 million, we have 10 million individuals having taxable income of Rs 1.5 million (a very conservative estimate), total income tax collection from them at the current rate for tax year 2012 should have been Rs 3750 billion. If we add income tax collected from corporate bodies, other non-individual taxpayers and individuals having income between Rs 400,000 to Rs 100,000, the gross figure would be nearly Rs 5000 billion. FBR collected only Rs 560 billion as income tax plus Rs 20 billion as other direct taxes during fiscal year 2010-11, and figure for the current fiscal year is expected to be around Rs 670 billion. This shows a whopping gap of Rs 4330 billion in income tax alone.

Similarly, in sales tax, federal excise and custom duties, due to rampant corruption, the total collection is only 20% of actual potential. In fiscal year 2010-11, FBR collected Rs. 633.4 billion under the head sales tax, Rs 137.4 billion under federal excise duty and Rs. 180.8 billion under custom duties. Total indirect collection of Rs 951.6 billion was pathetically low. It should have been at least Rs 3500 billion.

If existing tax gap is bridged, our revenue collection can reach Rs. 8500 billion (Rs 5000 billion direct taxes and Rs 3500 billion indirect taxes) which would change the entire fiscal scene. We would have enough money for current expenditure, development and public welfare outlays—government would be able to retire debts in just a few years and we can easily become a self-reliant economy. However, this dream for Pakistan can never be realized unless the mighty sections of society are taxed according to their actual ability to pay and tax policy is used as a tool for rapid industrialization and creation of job opportunities.

Determination of a tax base capable of measuring an individual's ability-to-pay is a major problem of our tax system. This rule is incorporated in the form of progressive rate schedule for personal income tax, estate duty, and property tax in democratic countries. In Pakistan, we have gradually and deliberately moved from progressive to regressive taxation. The mighty civil and military bureaucrats (now an integral part of our landed aristocracy by earning State lands as meritorious awards and rewards), industrialist-turned-politicians and greedy businessmen are paying meagre personal taxes whereas the poor people are subjected to pay sales tax and federal excise duty of 16%. The incidence of regressive taxes on the poor is making their lives a misery beyond imagination.

The present tax policies are detrimental for economy, social justice, business and industry. Those who possess more economic power (income and wealth) should contribute more to the public exchequer and vice versa. The ability-to-pay principle is regarded as the most equitable and just method of taxation and emphasized upon primarily for its

redistributive role. In Pakistan, our rulers have completely deviated from this principle, which is in fact, a constitutional obligation of the government. The existing tax system protects the rich and exploitative elements that have complete monopoly over economic resources. There is no political will to tax the privileged classes. Pakistan has been facing a variety of challenges on economic front, namely, resource mobilisation, reducing expenditures, curtail fiscal and trade deficits and infrastructure development. The most ignored one in improvement in tax-to-GDP ratio that can solve many problems.

In 2004, according to World Bank, tax-to-GDP ratio of Pakistan was 11.5% whereas India had only 9.9%. In 2011 India's tax-to-GDP ratio was 17.7% whereas ours dipped to 8.5%. Both India and Pakistan were faced with common problems like black money, *benami* (name-lending) assets, cash transactions, vast exemptions and absence of voluntary compliance. Our policymakers need to study how the Indians increased their tax-to-GDP ratio from 9.9% to 17.7 % in 7 years. Apart from many other successful initiatives, India utilised third party information that increased the capacity of Indian tax administration immensely and resulted in enormous revenue growth. On the contrary, we came down from 12.5% to 8.5% in the last ten years as the will to collect taxes, especially income tax from the rich and mighty, has dwindled down to almost zero.

When corruption is institutionalised...

by
Huzaima Bukhari & Dr. Ikramul Haq

Quest for power, money and fame is not restricted to any particular segment of society or class of persons. It attracts and haunts many. Quest for fame, power and money in itself is not undesirable, but the real problem begins when it becomes lust and corrupt practices are adopted to achieve them. A society ruled by the corrupt, greedy and hypocrite, especially when they hold key positions, is doomed to fail and become subjugated. The prevalent bizarre situation, that has emerged in the wake of suo muto case of Arsalan Iftikhar, son of Chief Justice of Pakistan, alleged beneficiary of millions of rupees from the real estate tycoon, Malik Riaz Hussain and his allegations in a Press conference on 12 June 2012, testifies to the captivity of the State in the hands of money-power hungry forces.

The elites of Pakistan (**ashrafiya**)—indomitable military-civil bureaucracy, corrupt politicians and unscrupulous businessmen—keeps on singing the *mantra* of "patriotism" (sic) but are involved in all kinds of undesirable activities. They indulge with impunity in rent-seeking, power politics, plundering of national wealth and organised crime. They consider it as their inherent right to deprive the poor of their

fundamental rights. Lack of accountability and unprecedented tolerance towards corruption has made Pakistan a State controlled and run by ruthless forces representing money power. It is thus no wonder that democracy could never take firm roots here even after 64 years of independence. Democratization of society is possible only through a credible system of accountability that works across the board—with no sacred cows like the judiciary and army as in our country. These institutions claim to have their own systems of accountability but end up protecting each other rather than punishing offenders. If mighty segments of society—politicians, high-raking state officials, judges and big businessmen—are not accountable, then how can democratic dispensation, transparency and rule of law be established? The public has no access to their tax declarations justifying sources of income through which they and their family members have amassed enormous wealth and assets?

One of the worst consequences of lack of accountability of the powerful is its pernicious effect on the general moral fabric of the society. Protection of the powerful and corrupt puts integrity at a discount and places a premium on vulgar and ostentatious display of power and wealth. This shatters the faith of the common man in the dignity of honest labour and virtuous living. Can democracy ever flourish in such a society? Democracy embodies some vital elements that are: fair and just electoral process and responsible governance protecting the rights of people, sovereignty of parliament, separation of powers, independence of judiciary, accountability and rule of law. Our society lacks all these elements and of course the results are before us.

Unfortunately, Pakistan has become a place where rampant and institutionalised corruption has become a way of life. In tandem with this silent conspiracy is the fact that the existing laws against racketeers are not enforced and if at all some action is taken, the penalty is ludicrous (e.g. case of Admiral (retired) Mansoorul Haq and such others).

In every-day life, there are many glaring examples of how corruption has become institutionalised. Take the business of cars. Even today, when economy is in deep recession, some locally-assembled cars are selling at a premium! Who is making money in this whole game? Why Pakistanis are forced to buy decade old models at exorbitant prices in the name of protecting local manufacturers? Are they not remitting money abroad through the mechanism of transfer pricing? On impressive highway from Lahore airport, in the unending line of sprawling bungalows, one can see the emergence of a society flushed with money. The dazzling suburbs of Defence Housing societies were non-existent before 1977. The story of their egress even after 35 years is shrouded in mystery. Under the shadow of martial laws, many in uniform and in plain clothes found favour with the men who matter in the land and who were given State lands at throwaway prices—this practice continues till today. Malik Riaz

is epitome of this ghastly phenomenon—beneficiaries of his shady empire are no angels though they post to be.

The real issue is not just mentioning a few individuals but to analyse the real causes behind the existing corrupt system. Money from whatever source it comes, is the catchphrase in our society: aid money, drug money, foreign money, American money in exchange for fighting war against terrorism (sic), and 'black' money (which can be 'whitened' by just 'remitting' through normal banking channels or investing in stock exchanges!). One just needs to go to a licenced money exchange company, pay the premium for telegraphic transfer to one's account, which is instantly arranged. A very simple way of money laundering and no accountability even before the tax administration [section 111(4) of the Income Tax Ordinance 2001 gives full protection to such sham transactions]. Is there any other State in the world that gives such patronage to such criminals? Answer must be an emphatic NO even though the proof of its being spent is available everywhere: in the ostentatious lifestyle of new urban development, in the bright galore of foreign cars on the roads, in the smugglers' markets brimming with latest foreign electronic gadgetry and in the shops crammed with foreign goods. Who says this is a poor country? The government is no doubt poor (*sic*) but the people are very rich—check out the number of rural people going for *umrah* these days and lavishly spending the good support price for their bumper wheat crop.

The chief preoccupation and addiction of this nation is **money**. Everybody is yearning for luxurious lives while their fellow countrymen are dying of hunger and diseases in open camps. This mad race for money and lavish living explains why the society as a whole is indifferent to corruption. “How do you make your money”? We asked a young industrialist from Karachi. “Easy,” he replied, describing his own success story: “We import everything and with some good contacts, strike a few deals with Customs high-ups, sit back and enjoy the fruit for life.” A dangerous result of all this is that in our society all rights have become privileges and privileges have become rights. The public has a right to services like education, health and transport, but the system behaves as if it is offering a privilege. The public servant is duty-bound to serve the public—instead he behaves as if it is inconvenient to do so. Most people working for the state are no longer interested in performing their job but in finding ways to extract a premium from the hapless citizen. The premium or, more accurately, bribe is now an accepted practice.

Tragically, it has become a free for all society and laws that are designed to prevent this just fall by the wayside. The general attitude is of helpless resignation, an acceptance of the defeatist principle that if one is to survive one must become part of the game. It then becomes dangerously akin to the rule of jungle—might is right, the weak are meant to fall out and the predators meant to prey freely. The bleak side of the picture is that the persons—judges, politicians and bureaucrats—who are capable

of checking this distortion, are unlikely to oblige: for it would sever their power base and financial lifelines. If the system is to be saved from sinking into greater chaos and ultimate collapse, corrective actions must be taken forthwith. The starting point should be a clear recognition of the State's role with respect to harmonious working of legislature, judiciary and administration. The State will have to vehemently devote its entire energies to enforcing laws that protect the public from cheats and racketeers rather than supporting a system which protects and encourages them. This requires a bold and clean leadership, capable of restraining the ballooning State, proclaiming this unpalatable truth and setting standards for the rest of the citizenry. Unless such a leadership emerges and acts fast with the help of masses, no positive results can ever be attained in fighting corruption no matter how many institutions like NAB, FIA exist or suo muto cases like Riaz-Arsalan are taken up by the apex court.

Finance Bill 2012
Attempting to cripple tax justice system

by
Huzaima Bukhari & Dr. Ikramul Haq

In the Finance Bill 2012, a number of changes have been proposed that can cripple the already ineffective tax justice system—amendments if approved by Parliament would render office of Commissioner of Appeals ineffectual and that of Appellate Tribunal Inland Revenue (ATIR) a 'camp office' of the Federal Board of Revenue (FBR). These amendments are aimed at obtaining confirmation of arbitrary and unreasonable orders passed with the aim to meet budgetary targets. Karachi and Lahore tax bars have already agitated against the proposed amendments by writing letters to the Minister of Law seeking his interference in the matter to ensure independence of the tax appellate forums[1].

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[1] The following is the text of letter sent by Lahore and Karachi tax bars:

> "We are writing this letter to seek your urgent intervention and bring to your kind notice proposed amendment introduced vide Finance Bill 2012 in respect of Appellate Tribunal Inland Revenue (ATIR), As you are aware, ATIR is the final appellate forum provided under the provisions of Income Tax Ordinance 2001 and Sales Tax Act, 1990, especially on facts. ATIR consists of judicial members and accountant members.
>
> a) There has been an age old tradition since introduction of Income Tax Act, 1922 that the Chairman of the ATIR has always been a judicial member, and this was ensured through provision of law in the Income Tax Ordinance, 2001.

The Finance Bill 2012 has proposed the following amendments that could be extremely detrimental for dispensation of justice to taxpayers:

a) The Commissioner of Appeals has been allowed to give stay only for one month. There is no mandatory provision to pass the order within the same period. Thus after one month, the Department will force recovery through coercive measures. The higher Courts time and again have held that a taxpayer should not be forced to pay any demand contested by him unless his

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b) In the present Income Tax Ordinance 2001, section 130(5) provided that the Chairman of the Tribunal shall be a judicial member except in special circumstances an Accountant member may be considered for this post. In the Finance Bill 2012, an attempt is being made to remove this requirement, thus paving the way for any Accountant Member being an officer serving either in Grade 20 or 21 [Inland Revenue Department of Federal Board of Revenue] to become a Chairman. Our Bar members have serious reservations on this proposed amendment as we strongly feel the ATIR being a judicial forum should be Chaired only by a senior Judicial member. We request your urgent intervention in this matter.

c) As per section 130(3) of Income Tax Ordinance 2001, the prescribed qualification to be a judicial Member of ATIR is that the person should have exercised powers of District Judge and is qualified to be a Judge of High Court OR has been an Advocate of High Court and is qualified to be Judge of High Court.

Whereas as per section 130 (3) of Income Tax Ordinance 2001 the prescribed qualification s for an Accountant Member of ATIR was that the person shall be an officer of Inland Revenue equivalent to the rank of Regional Commissioner OR a Commissioner Inland Revenue or Commissioner Inland Revenue (Appeals) with at least FIVE years' experience as Commissioner.

This requirement of Commissioner having at least FIVE YEARS experience is now vide proposed amendment in law through Finance Bill 2012 being reduced to a Commissioner having at least THREE years' experience. This Bar has serious reservations on this proposed change of lowering the experience requirement of Commissioner to THREE years and we seek your urgent intervention in the matter. We feel with ATIR being the final tax forum on facts, a Commissioner with at least FIVE Years of experience should be appointed as Accountant Member.

In order to have an impartial and judicious Appellate Tribunal, we also may add that test of Seniority as held by the Hon'ble Supreme Court in *Al Jehad's* case may also be put as condition precedent.

We, therefore, earnestly request you to kindly intervene in the matter and use your good office to have both the proposed amendments in section 130(5) and 130(3) of Income Tax Ordinance 2001 withdrawn from Finance Bill 2012. We request you to ensure the independence of this judicial forum of ATIR".

appeal is decided by an independent forum[1] i.e. ATIR. The Department is flouting these verdicts and forcing recovery by attaching accounts of taxpayers even during pendency of appeals. Recently, they have showed utter disrespect towards ATIR and in some other cases, even orders of restraint passed by High Courts.

b) At present in the ATIR, Account Members, coming from FBR, are officers in Grade 21 (Chief Commissioners) or Commissioners in Grade 20 with 5 years' of experience. The Finance Bill 2012 proposes to reduce this condition to 3 years' experience. This means induction of junior commissioners who could be influenced by FBR in the hope of better postings on their return to parent department.

c) The Chairman of ATIR is elevated from the Judicial Members, usually the senior most. At present, the Accountant Member can become Chairman but only if extraordinary circumstances exist. The Finance Bill wants to relax this condition, which would pave the way for total control on ATIR by the FBR.

The above changes, if implemented, would further destroy the already ailing 4-tier tax justice system [see '**Need for National Tax Court**'**,** *Business Recorder*, May 6-7, 2011]. This system already consumes so much time for final settlement that the very purpose of seeking remedy becomes meaningless—justice delayed is justice denied aptly applies to the existing tax appellate system.

In developing economies like Pakistan, one of the biggest problems is reluctance of ordinary people to file tax returns and thus submit themselves to scrutiny of their affairs by the tax administration. However, once a taxpayer has faith in the effectiveness of legal remedies against an unjust tax levy or unjust action of the taxation authorities, he is more likely to be truthful and honest to the taxation authorities, and to accept a reasonable levy of tax. The degree of taxpayer satisfaction does therefore go up which, in turn, is a sine qua non for better voluntary compliance resulting in greater resource mobilization. While on the surface, a tax judiciary inherently deals with the involuntary collections enforced by a tax administration, an efficient tax judiciary actually creates conducive atmosphere for better voluntary compliance by the

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[1] It is trite law that taxpayers cannot be forced to pay a disputed tax demand unless the matter is decided by an independent forum that in case of income tax, sales tax, federal excise duty is Appellate Tribunal Inland Revenue. The following cases are authority on this:

i) *Sunrise Bottling Co. (Pvt.) Ltd v Federation of Pakistan etc.* (2006) 94 TAX 140 (H.C. Lah.)

ii) *Punjab Provincial Cooperative Bank Ltd, Lahore v DCIT* 2002 PTD 2799

iii) *Riaz Bottlers (Pvt.) Ltd v CIT* (2008) 98 TAX 295 (H.C. Lah.)

iv) PTCL 2010 CL 460

taxpayer aiming at greater resource mobilization for the State. A tax administration which disposes of appeals promptly and speedily reaches a fair and final settlement can itself be classified as a tax incentive.

To a tax collector, an efficient tax judiciary ensures that demands arising out of legitimate tax assessments, which can stand scrutiny of law, are not unnecessarily locked up in litigation. As long as there is pending litigation in relation to a particular tax levy, there is a natural, and quite understandable, desire on the part of the taxpayer not to pay the pending disputed amount. An efficient tax judiciary resolves disputes quickly, quashes demands which are not legally sustainable, and thus segregates serious tax demands from frivolous tax demands, while also giving finality to legitimate tax demands. This in turn ensures that the taxpayer cannot resort to dilatory tactics for paying these genuine and legitimate tax demands which have received judicial approval. An efficient tax judiciary thus helps removing impediments from collection of tax demands by the State, which, once again, results in greater resource mobilization.

An effective [1]tax judiciary does not only settle tax disputes between the citizen and the State, but it also lays down guiding principles on the basis of which future disputes with materially identical facts, are easily resolved. This way, an effective tax judiciary also contributes to smooth functioning of the tax machinery.

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[1] In the Sub-continent, income tax was introduced by the British colonial rulers in the year 1860, but for its first eight decades of existence, grievance redressal mechanisms left much to be desired. There was no separation of administrative and appellate functions, and the very Assistant Commissioners and Commissioners, under whose supervision and guidance, tax assessments were done by the Income Tax Officer, were the first and second appellate authority against the order of the Income Tax Officer. There was thus a clear clash of interest between the administrative and appellate functions of the tax authorities. A Commissioner, on one hand, had revenue targets to achieve, and while deciding appeals of the taxpayers, who perceived their tax assessments to be unjust and unfair, application of the taxpayer, refer the points of law for the opinion of the High Court. If the Commissioner so declined to state the case at the request of the taxpayer, the taxpayer could approach the High Court and seek a writ of "mandamus" requiring the Commissioner to state the case. This system of grievance redressal of the taxpayer was not very user friendly, there was no independent adjudication by anyone outside the tax administration on the question of facts, and the costs involved in the legal process, i.e. before High Courts, were very high. This system was perceived to be oppressive and undemocratic. There was so much resentment against this system that the Government had to give in to the public pressure and, by Income Tax (Amendment) Act, 1939, bring about two important reforms—first, that judicial and administrative functions of the tax authorities were separated; and—second, an independent body, the Income Tax Appellate Tribunal was created to hear appeals against orders of the first appellate authority on all questions of facts and law. That is how that Income Tax Appellate Tribunal was set up in the Sub-continent in 1941.

The setting up of the [1]Tribunal in 1941 brought about a paradigm shift in the grievance redressal system. The scheme of things in the Tribunal envisaged complete functional independence of the institution, a high degree of legal and technical expertise of the Members manning the benches, user friendly, simpler and informal procedures, and inexpensive and quick justice delivery. Over the decades, the [2]Tribunal has been strengthened with changes made to cope with the increasing burden of cases and growing complexity of disputes.

The powers of the ATIR are exercised by the benches [section 130 of the Income Tax Ordinance, 2001]. Cases in which amount of tax or penalty does not exceed Rs. one million can be heard by a single member bench, either by a Judicial Member or an Accountant Member. Majority of the cases are heard by division, or regular, benches which must consist of one Judicial Member and one Accountant Member. There is no ceiling on amount of tax involved or income assessed in the cases to be heard by such division or regular benches. Special benches, of three or more Members, of which at least one Member must be a Judicial Member and one Member must be an Accountant Member, are formed on issues on which either division benches have expressed conflicting views or on issues which are of considerable importance. It is thus ensured that the decision of each of the regular or larger bench has the benefit of inputs from both a Judicial Member and Accountant Member.

The qualification for appointment as Judicial Member is the same as that for the appointment of a High Court judge, and only well experienced and competent people from the legal profession and judiciary are selected.

Prior to amendment in 2007, the Accountant Member must have been an officer of Grade 21. In 2007, Commissioner in Grade 20 having appellate experience of five years was also included. In 2010, the condition of working as Commissioner Appeal was removed. And now the Finance Bill 2012 proposes reduction from 5 to 3 years. Amendments made in 2007, 2010 and those proposed in Finance Bill 2012 are highly undesirable. The officer from FBR having little experience or no experience of appellate work should never be permitted to be part of ATIR.

In India, accountant members are selected from amongst senior officers of Indian Revenue Service and from amongst chartered accountants having

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[1] The setting-up of the Tribunal in 1941 was welcomed by the public at large. The then Leader of Opposition in the Legislative Assembly, Mr. Bhulabhai J. Desai, welcomed the proposal by stating on the floor of the Assembly as follows:

> **"… with the intervention of such a Tribunal, a substantial step has been gained from the point of view of the taxpayer, that so far as any injustice will be done to him either by misapplication of law or by a wrong finding of facts by the official hierarchy, he will have now redress from an independent body with sufficient legal and accountancy qualifications….."**

[2] Incidentally, the Income Tax Tribunal was the first Tribunal set up in the Sub-continent, and it was this successful experiment which resulted in setting up of many more Tribunals.

at least 10 years of practice in taxation. Thus, every bench has the unique advantage of examining issues from the point of view of a trained legal expert as also from the perspective of a mature revenue person or CA, who has knowledge and understanding of real life tax and business realities. Normally, one of the Members in the bench is sufficiently a senior person with reasonable exposure to the varied situations dealt with in the cases. While, on the factual aspects, a decision of the Tribunal is final, on substantive questions of law, jurisdiction of the High Court can be invoked. Interference by the High Court and the Supreme Court, however, is more of an exception than the rule.

The proposal through Finance Bill 2012 to lower the service period requirement of Commissioner to be Member of the Tribunal to three years [section 130(4)(b)] needs to be reconsidered. Junior Commissioners who may have never even worked as Commissioners of Appeal would lack skills to work as Accountant members. The technical quality of work and understanding of matters required at the Tribunal level would be highly compromised by appointment of such Commissioners.

Amendment proposed in section 130(5) that is deleting the words "and except in special circumstances", is to facilitate an Accountant Member to become the Chairman of ATIR. This is against the principle of independence of judiciary. A person having lien with FBR (an executive authority) cannot perform the functions of Chairman as it would be in utter violation of Para 5 of the National Judicial Policy 2009 which says:

> **"All special courts/tribunals under the administrative control of Executive must be placed under the control and supervision of the Judiciary, their appointments/postings should be made on the recommendation of the Chief Justices of concerned High Court" [Page 12]**

Thus the original position of law that only a judicial member can be Chairman of the Tribunal must be maintained. In fact, the ATIR should freed from the control of Ministry of law and should be placed under the judiciary [Bill for this was prepared by us; see '**Need for National Tax Court**', *Business Recorder*, May 6-7, 2011].

To make the ATIR a truly independent and effective judicial forum, it is imperative to provide for recruitment of Chartered Accountants (CAs) and Cost and Management Accountants (CMAs), having tax experience of at least ten years, as Accountant Members through Federal Public Service Commission (FPSC). As far as officers from FBR are concerned, the rank should be Chief Commissioner or Commissioner with five years of experience, having served at least two years as Commissioner of Appeals. They should also be inducted for good in Tribunal through FPSC with no lien to go back to FBR. This is necessary to make Tribunal an independent appellate body. Ideally, for recruiting Accountant Members, there should be an independent 'All Pakistan Tax Appellate Service' in which officers from FBR and tax professionals (FCAs and FCMAs) should

be selected by FPSC through a transparent procedure, advertising the posts widely on national level.

Section 108 of income tax law: Application of 'arm's length principle'

by
Zafar Azeem[*]

In order to bring a transaction within the fold of section 108,1 the transaction must be an intra-group service and that too violating the arm's length principle. As regards the arm's length principle, it has been defined in paragraph I of Article 9 of the OECD Model Tax Convention. It provides:

"...Where conditions are made or imposed between two associated enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly..." The said paragraph I is the foundation for comparability analysis because it introduces the need for:

- A comparison between conditions (including prices, but not only prices) made or imposed between associated enterprises and those which would be made between independent enterprises, in order to determine whether a re-writing of the accounts for the purposes of calculating tax liabilities of associated enterprises is authorized.
- A determination of the profits which would have accrued at arm's length, in order to determine the quantum of any re-writing of accounts.

Assuming that a disputed transaction was an intra-group service, it is the duty of assessing authority to identify the existence of some arrangements between the parties and to find out the nature of these arrangements. One has to determine what the said arrangements are, and the matter should be considered from the perspective of disputed transaction and from the perspective of the recipient of the goods or service. In this respect, relevant considerations include the value of the goods or service to the recipient and how much a comparable independent enterprise would be prepared to pay for like goods and service in comparable circumstances including the costs incurred by those involved in the transaction. For example, in respect of a financial service, rates

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offered by commercial banks are neither comparable rates akin to an independent enterprise nor these rates are independent as the same are controlled by the Central Bank and do include manifold considerations of the state's monetary policy compared to an independent transaction in the market.

Further considerations to determine the existence of arm's length include the following:

(a) The matter should be considered both from the perspective of the seller and from the perspective of recipient of the goods or service, relevant consideration may be inclusion of the value of the goods or service to the recipient and for how much a comparable independent enterprise is prepared to sell the goods or service at a comparable value.

(b) From the perspective of an independent enterprise offering goods and service, the seller in that market may or may not be willing or able to supply the goods or service at a price that an independent enterprise is prepared to pay. If the seller can supply the wanted goods or service within a range of prices that the independent enterprise is willing to pay, then a deal may be struck. From the point of view of the seller, a price below which it may not be possible to supply the goods or service including cost to it are relevant considerations to address, but these are not the only necessarily determinative of the outcome in every case.

(c) There should be a consistency between the controlled and uncontrolled transactions in the categories of cost that are being compared.

(d) In an arm's length transaction, an independent enterprise normally would seek to charge for goods or services in such a way as to generate profit, rather than providing the goods or services merely at cost. The economic alternatives available to the recipient of the service also need to be taken into account in determining the arm's length charge.

(e) In determining whether the intra-group services represents the same value for money which is comparable with an independent enterprise becomes a relevant factor, and a comparison of functions and expected benefits becomes relevant factor for assessing comparability of the transactions.

Failing to define the considerations on the basis of which one challenges the disputed transaction not being at arm's length requires evidence and in absence thereof, such challenge will be illegal. It may be important to note here that where the burden of proof lies on the revenue, the tax payer is under no obligation to prove the correctness of its transaction or transfer pricing and it is incumbent upon the revenue to make a prima

facie case showing that pricing is inconsistent with the arm's length principle and the taxpayer has failed to do so.

A transaction between associated persons does not become defective only due to the fact that transaction has taken place between the related or associated parties. It is the availability of comparable evidence on the basis of which a doubt can be casted on such transactions. For example, rule 21 of the Income Tax Rules 2002 is linked with the CUP method, a method of determining transfer pricing. The said method is a reliable method where an independent enterprise sells the same product as is sold between two associated enterprises. For example, an independent enterprise sells unbranded Colombian coffee beans of a similar type, quality, and quantity as those sold between two associated enterprises, assuming that the controlled and uncontrolled transactions occur at about the same time, at the same stage in the production/distribution chain, and under similar conditions. If the only available uncontrolled transaction involved unbranded Brazilian coffee beans, it would be appropriate to inquire whether the difference in the coffee beans has a material effect on the price. For example, it could be asked whether the source of coffee beans commands a premium or requires a discount generally in the open market. Such information may be obtainable from commodity markets or may be deduced from dealer prices. If this difference does have a material effect on price, some adjustments would be appropriate. If a reasonably accurate adjustment cannot be made, the reliability of the CUP method would be reduced, and it might be necessary to select another less direct method instead.

From what was been stated above it is concluded that for invoking Section 108 which refers to the concept of transfer of pricing and is in fact anti-avoidance provision of the tax law, the revenue is required to establish that there was an avoidance of tax.

1. Section 108 reads: Transactions between associates.- (1) The Commissioner may, in respect of any transaction between persons who are associates, distribute, apportion or allocate income, deductions or tax credits between the persons as is necessary to reflect the income that the persons would have realised in an arm's length transaction. (2) In making any adjustment under sub-section (1), the Commissioner may determine the source of income and the nature of any payment or loss as revenue, capital or otherwise.

Harassing tax officers: LHC directs FTO to appear before court

The Lahore High Court Chief Justice here Monday directed Federal Tax Ombudsman(FTO) Shoaib Suddle to appear before the court in a petition accusing him of harassing tax officers. The petitioner an additional commissioner, land revenue Faisalabad Muhammad Saleem alleged that the respondent had been harassing tax officers and asking them to collect undue tax from the taxpayers.

The petitioner said the tax officers had been facing job threats and inquiries for defying 'illegal' orders of the Ombudsman. A law officer argued that the Ombudsman had powers to summon tax officers. However, he rejected the argument and observed that the office of the tax Ombudsman was not a police station where officers were summoned. The court also pointed out that the tax officers were judicial officers, in fact, and adjourned the proceedings for a week. – *Courtesy Business Recorder*

LTBA concerned over proposed amendment to Income Tax Ordinance

Lahore Tax Bar Association (LTBA) has shown serious reservations on an amendment proposed in section 130 of the Income Tax Ordinance 2001 through Finance Bill 2012 alleging that it is an attempt to pave the way for appointment of any Accountant Member as the Chairman Appellate Tribunal Inland Revenue (ATIR).

LTBA President Zahid Ateeq Choudhry in a letter addressed to the Federal Minister for Law and Justice Farooq H Naek has urged him to intervene in the matter to ensure the independence of the judicial forum of ATIR. He further writes that Appellate Tribunal Inland Revenue (ATIR) was the final Appellate forum provided under the provision of Income Tax Ordinance 2001, and Sales Tax Act 1990 and being a highest Appellate Judicial and impartial forum, Appellate Tribunal Inland Revenue (ATIR) Chairman has always been a judicial member and the same was ensured through section 130 of the Income Tax Ordinance, 2001.

However, present Income Tax Ordinance 2001, 130(5) provides that the Chairman of the Tribunal shall be a judicial member except in special circumstances an Accountant Member may be considered for this post. In the Finance Bill 2012, an attempt is

being made to remove this requirement, thus paving the way for any Accountant Member being an officer serving either in Grade 20 or 21 (Inland Revenue Department of Federal Board of Revenue) to become a Chairman, he added.

Zahid Ateeq Choudhry claim that Bar members have serious reservations on this proposed amendment as they feel that Appellate Tribunal Inland Revenue (ATIR) being a judicial forum should be chaired only by a senior judicial member. As per section 130(3) of Income Tax Ordinance 2001, the prescribed qualifications to be a judicial member of ATIR is that the person should have exercised power of District Judge and is qualified to be a judge of the High Court or has been an advocate of High Court and is qualified to be judge of High Court. Similarly under the same Income Tax Ordinance the prescribed qualifications for an Accountant Member of Appellate Tribunal Inland Revenue (ATIR) was that the person shall be an office of Inland Revenue equivalent to the rank of Regional Commissioner or a Commissioner Inland Revenue or Commissioner Inland Revenue (Appeals) with at least five years experience as Commissioner.

He claimed that this requirement of Commissioner having at least five years experience is now being reduced to a Commissioner having at least three years experience vide the proposed amendment. He said that Bar had serious reservation on this proposed change and felt that ATIR being the final tax forum on facts, a Commissioner with at least five years of experience should be appointed as Accountant member. In order to have an impartial and judicious Appellate Tribunal, Lahore Tax Bar Association (LTBA) said test of seniority as held by the Honourable Supreme Court in Al Jehad's case might also be put as condition precedent. – *Courtesy Business Recorder*

Sindh sales tax 'defaulters' exempted from penalty, default surcharge

Sindh Revenue Board (SRB) has exempted whole of the amount of penalty and default surcharge payable by a person who has failed to pay any amount of Sindh sales tax or against whom an amount of Sindh sales tax is outstanding on account of any non-payment or short payment of the tax due to any reason, including audit observation or show cause notice or adjudication order or assessment order or appellate order or inadmissible input tax credit or adjustment, subject to the condition that the principal

amount of Sindh sales tax is paid by him on or before the June 15, 2012.

In this regard, SRB has issued a notification a few days back which states: "In exercise of the powers conferred by section 45 of the Sindh Sales Tax on Services Act, 2011 (Sindh Act No XII of 2011), the Sindh Revenue Board, with the approval of the Government of Sindh, is please to exempt whole of the amount of penalty and default surcharge payable by a person who has failed to pay any amount of Sindh sales tax or against whom an amount of Sindh sales tax is outstanding on account of any non-payment or short payment of the tax as was payable under the Sindh Sales Tax Ordinance, 2000 (Sindh Ordinance No VIII of 2000), or under the Sindh Sales Tax on Services Act, 2011, due to any reason, including audit observation or show cause notice or adjudication order or assessment order or appellate order or inadmissible input tax credit or adjustment, subject to the condition that the principal amount of Sindh sales tax is paid by him on or before the 15th June, 2012.

The penalties involved for the offences of non-registration and non-filing of tax returns shall also be exempt provided the person registers himself with the SRB on or before the 15th June, 2012, and e-files the prescribed tax returns for the tax periods upto May, 2012, on or before the 15th June, 2012. Provided that this notification shall not apply for the refund of any penalty or default surcharge as has been paid by any person before the date of this notification. – *Courtesy Business Recorder*

FED on air tickets: Amendment to be proposed to retrospectively allow exemption

A major amendment would be proposed in the Federal Excise Act 2005 through amended Finance Bill (2012-2013) to retrospectively allow exemption of the Federal Excise Duty (FED) on the tickets issued outside Pakistan on international air travel.

On the conclusion of the Senate Standing Committee meeting on Finance here on Monday, sources told that prior to budget (2012-2013) the FED was chargeable on foreign travel to and from Pakistan. The FED would remain applicable on the air tickets issued from Pakistan. In budget (2012-2013), the Federal Board of Revenue (FBR) has revised Federal Excise Duty on foreign travel enforced through amendment in Table-I of the First Schedule to the Federal Excise Act, 2005, effective from the July 1, 2012. This

means that the FED would be collected only on embarkation of passengers from Pakistan.

The FBR will propose an amendment in the Third Schedule (conditional exemptions) of the Federal Excise Act 2005 to exempt, with retrospective effect, international air travel in cases where tickets have been issued by airlines abroad. The international passengers coming to Pakistan on the tickets issued outside Pakistan would not be subjected to the FED and the exemption would be applicable retrospectively from the date of imposition of the FED on "travel to and from Pakistan". Thus, the FED would be enforced on the international passengers going from Pakistan.

A new entry would be included in the Third Schedule of the Federal Excise Act 2005 through the amended Finance Bill. This is subject to the condition that the amendment has been dully approved by the Parliament. Giving legal background of the issue, Chairperson of the Senate Standing Committee on Finance Nasreen Jalil informed the committee that government of Pakistan introduced FED on international travel from Pakistan in 2006. In July, 2007 the law was amended to also include FED on tickets sold outside Pakistan for "Travel to and from Pakistan". Since the FED cannot be imposed on goods or services outside Pakistan. Finance Bill 2012-13 amended the law but omitted to give retrospective effect to the law.

In Financial year 2011-12 Large Taxpayer Unit (LTU) Karachi started sending notices to airlines for the recovery of the FED as per law. The Committee recommended that the explanation in the Finance Bill 2012-13 should include exemption from Excise Duty: Entry-8 of the Table 11, of the Third Schedule, giving retrospective effect to the Amendment from July 1, 2007. Or a statutory regulatory order (SRO) should be issued to the effect. As a result of this amendment in the Federal Excise Act, the LTU in Karachi can withdraw notices issued to the Airlines from the period July 2008 to 2011, recommendation of the committee added.

It is worth mentioning that the Board of Airlines Represent-atives in Pakistan (BARIP) from Karachi in its budget proposals (2012-13) had asked the FBR to make certain amendments in the FED structure in line with the international best practices. The BARIP has explained that the international civil aviation laws object to taxation on travel not including embarkation from the country. The BARIP has also proposed that the law be amended so that it is responsibility of the uplifting carrier of the embarking passenger

from Pakistan and not the issuing carrier to pay tax/duty. This will help in the correct collection of FED on all the embarking passengers. – *Courtesy Business Recorder*

Expert says 'business confidence' remains fragile

Chief Commissioner Large Taxpayers Unit Islamabad has said the business confidence remains fragile and continues to hinder the prospects to achieve sustainability. He was speaking at post budget seminar organised by CPD Committee of Islamabad, Rawalpindi in collaboration with Rawalpindi Islamabad Tax Bar Association (RITBA) on the other day at Islamabad.

The chief guest Syed Ijaz Hussain Shah expressed his concern over the present state of economy and the highlights of budget were brought forward and its significance in parallel to present circumstances as the business confidence remains fragile and continues to hinder the prospects to achieve sustainability. Imran Afzal-FCA, past president ICAP, partner Anjum Asim Shahid & Co, Rashid Ibrahim- FCA, partner A.F Ferguson & Co, Kashif Shabbir, past president Rawalpindi Chamber of Commerce and Industry and Dr Rashid Amjad, Vice Chancellor Pakistan Institute of Development Economics were among the speakers.

The welcome address was given by Agha Mujeeb, President Rawalpindi Islamabad Tax Bar Association (RITBA). Honourable speakers shared their views on changes in tax laws proposed by finance bill 2012, its repercussions on industrial sector and economic conditions prevalent in the Pakistan economy. The session has provided a great opportunity to participants to have face to face overview of said budget and directly address any concerns about it. – *Courtesy Business Recorder*

Sales tax collection: SRB given Rs 32 billion target for fiscal year 2013

With an increase of Rs 7 billion as compared to outgoing fiscal year, the Sindh government has fixed Sindh Revenue Board's target at Rs 32 billion for FY13. The SRB target for FY12 was Rs 25 billion and more than Rs 21.5 billion were collected during in more than 10 months. This institution works for the collection of sales tax on services. This right of collection was given to provinces after passage of 18th Amendment and 7th NFC Award.

As an initiator, Sindh had established SRB to collect sales tax on services from companies and individuals of telecommunication, hotels, restaurants, marriage halls, lawns clubs, caterers, advertisements, courier, services provided or rendered by persons engaged in contractual execution work or furnishing supplies, banks, insurance, co-operative financing societies, leasing companies, foreign exchange dealers, non-banking financial institutions, services provided or rendered by specified persons or businesses, stockbrokers, money exchanger, franchise, construction services and services provided by terminal operators except terminal fee charges.

Sources inside the finance department said officials of this department had briefed the Chief Minister Sindh of Syed Qaim Ali Shah a few days back about the overall income generated by province itself in various tax-heads. During that meeting, it was suggested that the SRB collection target would be increased to Rs 32 billion for next fiscal year.

The Chief Minister (who is looking after the portfolio of SRB as well) while expressing satisfaction over the suggestion, had asked the finance department that it mention Rs 32 billion of sales tax on services in the head of Sindh's own income of FY 2012-13, they said.

Later, the officials of Chief Minister House and the Finance Department had informed the officials of SRB about the approval of this kind of suggestion, they added. In this connection, a high level official of SRB told on condition of anonymity that SRB can collect Rs 32 billion in FY13, only after getting approval for collecting other provincial taxes otherwise it could not meet this new target in new fiscal year, he added.

"According to recent break-up of collection, SRB collected Rs 7.6 billion from telecommunication sector, Rs 3.1 billion from insurance sector, Rs 2.23 billion from banks, Rs 7 billion from restaurants, cafes and caterers, Rs 57 billion from courier, Rs 443 billion from stevedores, Rs 35 billion from hotels, Rs 329 billion from custom agents and Rs 1.2 billion from withholding sector," he added. He claimed that the monthly average collection is Rs 2.3 billion and in July 2012, SRB would achieve its target. It would be surpassed if federal government returns its Rs 1.5 billion which it collected in the mode of FED in early months of outgoing fiscal year, he added. – *Courtesy Business Recorder*

Registration/transfer of property: Senate approves recommendation to slap advance tax

The Senate on Tuesday approved a recommendation to impose advance tax on property by making it mandatory for all the authorities responsible for recording and registration of transfer of immovable property to withhold a minimum amount of 0.5 percent tax at the time of registration or transfer of property. The recommendations of the Senate Standing Committee on Finance were laid before the house and approved here on Tuesday.

According to the recommendation approved by the Senate, any person responsible for registering or attesting transfer of any immovable property shall at the time of registering or attesting shall collect from the seller or transferor advance tax at the rate of 0.5 percent. The rate of tax to be collected shall be 0.5 percent of the gross amount of the sale proceeds recorded. The advance tax collected shall be adjustable and this tax shall not be collected in the case of the federal government, provincial government or a local government.

Following is the text of the two recommendations of the Senate Standing Committee on Finance approved by the Senate: The Senate recommends to the National Assembly that in the Finance Bill 2012 in clause 13 after sub-clause (53), a new sub-clause (adding a new section 265C in the Income Tax Ordinance) shall be added, namely:- "(53A) 236C. Advance tax on sale or transfer or immovable property.

1. Any person responsible for registering or attesting transfer of any immovable property shall at time of registering or attesting shall collect from the seller or transferor advance tax at the rate specified in Division-X of Part IV of the First Schedule of the Income Tax Ordinance 2001;

The advance tax collected under sub-section shall be adjustable and The advance tax under this section shall not be collected in the case of the Federal Government, Provincial Government or a Local Government". The Senate recommends to the National Assembly that in the Finance Bill 2012 in clause 13 in sub-clause (54), in paragraph (iv) after sub-paragraph (b), a new sub-paragraph shall be added namely:

"(c) after Division IX, a new Division shall be added, namely: Division X Advance tax on sale or transfer of immovable property The rate of tax to be collected under section 236C shall be 0.5 percent of the gross amount of the sale proceeds recorded", text of

the recommendations of the Senate Standing Committee on Finance added. – *Courtesy Business Recorder*

Prime Minister Fiscal Relief Package for Khyber Pakhtunkhwa, Fata: two-year extension may cost FBR Rs 20 billion

The FBR will suffer a revenue loss of Rs 20 billion in case the Prime Minister Minister's fiscal relief package for the businessmen of the Khyber Pakhtunkhawa and tribal areas has been further extended for two years. Sources told here on Tuesday that one year revenue loss due to expected continuation of the fiscal relief package would cause revenue loss of Rs 10 billion in 2012-2013.

If the package has been extended for a period of two years, the FBR will suffer revenue loss to the tune of Rs 20 billion. Senate has approved a recommendation of the Standing Committee on Finance to allow two years extension in the Prime Minister's fiscal relief package announced for the manufacturers, traders and other categories of businessmen operating in the war-affected areas of KP. The PM package would be expired on June 30, 2012.

This package was intended to be available for three years, however, the sales tax and the federal excise duty (FED) portion of the PM's fiscal relief package do not have an expiry date. At the same time, this scheme has created distortions in the tax regime. The FBR had notified the fiscal concessions through SROs 160 to 165(I)/2010.

Under these notifications, the sales tax exemption was announced on supply of electric power to manufacturers; 50% reduction in the rate of sales tax on domestic supplies of goods ; exemption of excise duty on goods manufactured in Fata/Pata and selected 13 districts of KP. Therefore, the FBR had proposed in budget (2012-13) that the distortion may be removed by withdrawing all notifications pertaining to the sales tax and the FED. – *Courtesy Business Recorder*

FBR chairman inaugurates Atlas Honda plant

The government will support manufacturers through prudent policies and encourage them to enhance capacity and transfer of technology to benefit local consumers and increase exports of Made in Pakistan motorcycles. Federal Board of Revenue (FBR) Chairman Mumtaz Haider Rizvi said this while inaugurating

Atlas Lahore Honda motorcycle's plant production capacity enhancement to 0.75 million bikes a year with 35 million dollars investment.

He said he looked forward to their next landmark of achieving production and sales targets of one million motorcycles a year, as it would be direct support to achieve FBR's revenue collection targets. He asked visiting Honda Japan officials to plan two million motorcycles production for local market and tap regional markets. – *Courtesy Business Recorder*

Senior auditor designated as SRB officer

Sindh Revenue Board (SRB) on Tuesday designated Senior Auditor as the officer in matter of calling information, for analysing such information and preparing the reports thereon.

SRB issued a notification in this regard, a copy is available with which stated that in exercise of the powers onferred by sub-section (1) of section 34 read with section 35 of the Sindh Sales Tax on Services Act 2011, the SRB pleased to designate Senior Auditor of the SRB, to be the officer of the SRB in the matter of calling information, for analyzing such information and preparing the reports thereon, under the provisions of sub-section (2) of Section 27, sub-section (2) of section 28, and sub-section (2) section 52, of the Sindh Sales Tax on Services Act, 2011. – *Courtesy Business Recorder*

Issuance of ST, income tax refunds: FBR directs field formations to avoid inordinate delay

The Federal Board of Revenue (FBR) has strictly directed the field formations to avoid deliberate delay in issuance of genuine sales tax and income tax refunds and action would be taken against the officials responsible for such delays, reflecting aggregated pendency of sales tax/income tax refunds of Rs 137.08 billion as on June 30, 2011.

Sources told here on Tuesday that the FBR has issued instructions to the Chief Commissioners of Large Taxpayer Units (LTUs) and Regional Tax Offices (RTOs) for taking action against tax officials personally responsible for delay in issuance of the genuine refund claims.

According to the FBR's instructions to the field formations, all Chief Commissioners Inland Revenue are directed to instruct their officers not to deliberately delay the settlement of genuine refund claims and as any officer found guilty of deliberately holding back the refund shall be held personally liable for such an act.

The FBR further said that Federal Tax Ombudsman (FTO) Office in a complaint has expressed serious concern over the figures of pending refund of income tax and sales tax as on June 30, 2011. As on June 30, 2011 the aggregated pendency of refunds was Rs 137.08 billion. Out of this amount the pendency of income tax refund was Rs 101.57 billion and sales tax refund was Rs 35.51 billion. The aggregated pendency of refunds was Rs 74.62 billion as one June 30, 2010. The break-up of Rs 74.62 billion revealed that the Rs 50.52 billion was related to income tax whereas Rs 24.10 billion was pending on the sales tax side. The aggregated pendency of refunds was Rs 50.31 billion as one June 30, 2009. Out of this amount, the pending amount of income tax refund was Rs 31.56 billion and sales tax refund was Rs 18.75 billion.

As per FBR's instructions, the FTO has observed that apart from damaging taxpayers' faith in the revenue collection system the exorbitant increase in pendency of outstanding refunds adversely affects the liquidity position of business, industries and exporters by way of blocking their capital resources. The FTO has further observed that disbursement of legitimate refund is purposely held by the field formations for reporting higher than real net collection of revenue. In view of the observations of the FTO mentioned, all the Chief Commissioners of the LTUs and RTOs have been directed to instruct their officers not to deliberately delay the settlement of genuine refund claims and as any officer found guilty of deliberately holding back the refund shall be held personally liable for such an act, FBR's instructions added. – *Courtesy Business Recorder*

FBR chief hopeful despite dismal collection

In order to reach ambitious revenue collection target of Rs 1,952 billion of the outgoing fiscal year 2011-12, the Federal Board of Revenue (FBR) is focusing on curbing illegal input adjustments as well as maximizing efforts to monitor withholding tax regime for additional revenues generation, sources said on Tuesday.Sources informed that FBR has provisionally collected some Rs 1,660 billion so far (till June 7 or 8) of the outgoing financial year and it

has to collect further Rs 292 billion in the remaining 22 days to reach the annual target of Rs 1,952 billion, which is a tough challenge for the board. However, chairman FBR Mumtaz Haider Rizvi is optimistic to achieve the target, as he has already said that he would quit his office if the board failed to achieve the annual tax collection target, which according to the independent economists and even to the Planning Commission of Pakistan seems difficult to achieve. The Planning Commission of Pakistan in recent Annual Plan 2012-13 has projected that FBR tax collection would reach to Rs 1,922 billion against the target of Rs 1,952 billion set for the fiscal year to end on June 30. However, chairman FBR and its team is striving hard to collect Rs 1,952 billion. The tax department is focusing on curbing illegal input adjustments as well as maximising efforts to monitor withholding tax regime.Sources said that FBR achieved revenue collection target of Rs 188 billion set for the last month of May despite the fact that FBR officials were preparing budget proposals for the next fiscal year 2012-13. They further said FBR has focused now all efforts to reach the Rs.1,952 billion collection target. It is merit mention here that FBR has set a challenging revenue collection target of Rs 2,381 billion for next financial year 2012-13, which is based on the target of outgoing fiscal year 2011-12. – *Courtesy The Nation*

Tax set-up termed pro-rich, anti-poor

Special advisor to the Prime Minister, Aslam Gill has said that the government has taken several relief measures in the budget 2012-13 including setting income tax rate slab at Rs400,000, increasing basic salaries and pensions by 20 per cent and creating 100,000 jobs for graduates.He was addressing a post-budget seminar organised by the Institute of Cost and Management Accountants of Pakistan (ICMAP). Shahzad Ahmad Awan, treasurer of ICMAP, Aamir Ijaz Khan, chairman Lahore Branch Council and Muhammad Yasin, Secretary Lahore Branch Council, made presentations on the occasion.The special advisor to the Prime Minister Said the post-budget seminars play an important role in mobilizing public opinion to frame suggestions for assisting the governments. "ICMAP has always been very active in this area. The suggestions put forward by the Cost and Management Accountants have usually proven very useful for us,"he said.He said Pakistan has long been experiencing recessionary trends,

adding that our country is cash-starved due to massive national debt. By increasing revenues and exports, he said, we could have salvaged the position, but things have never gone the way we have been planning. He said the ground reality is that we usually find it difficult to generate enough revenue and increase exports whereas the expenditures are continuously rising due to inflationary trends. Speaking on the occasion, Imran AFzal (FCA) said that national budget would go a long way in strengthening the economy, creating employment opportunities, bringing prosperity to the poor and improving the quality of life. He said the present socio-economic problems demanded extra hard work from all of us.Chairman Lahore Branch Council, Institute of Cost and Management Accountants of Pakistan (ICMAP) Amir Ijaz Khan said Pakistan 's tax set-up was more pro-rich than pro-poor. Resultantly, the rich paid less tax than they should and poor were compelled to pay taxes in spite of the fact that they had a very low capacity to pay. – *Courtesy The Nation*

WHT collection through dealers opposed

The collection of withholding tax through distributors and dealers of manufactured goods will not be possible, said Dr. Hassan Sarosh Akram, central chairman of the Pakistan Poultry Association, while talking to a delegation of poultry farmers.

He explained that distributors of manufactured goods are not organised and besides this most of them are unaware of procedures relating to account maintenance and transactions.

It is apprehended that the distributors would either adopt unhealthy practices or they would go out of business in resentment and thus the liability of paying withholding tax shall fall back on manufacturers of goods who would include one percent withholding tax in their cost of goods and shall try to recover withholding tax from consumers or general public Dr. Akram suggested that provision of collection of withholding tax from distributors on account of sale of manufactured goods as required under section 153-A may kindly be withdrawn in the interest of public at large.

He further stated that public is already under pressure of rising inflation and such step would further add to their miseries. – *Courtesy The News*

LCCI to prepare SOPs for sales tax registration

The Lahore Chamber of Commerce and Industry will prepare Standard Operating Procedures (SOPs) for sales tax registration of manufacturers and traders and forward them to the FBR for approval and implementation.

The understanding was reached during a meeting of a three-member LCCI delegation with chief commissioner, Regional Tax Office (RTO-I) here on Wednesday. The LCCI delegation, led by acting president, Kashif Younis Meher, and comprising former senior vice president, Abdul Basit, and former executive committee member, Shahzad Azam Khan, called on chief commissioner, Raana Ahmad, and informed her about undue delay in the registration of sales tax on industries.

The chief commissioner said that the LCCI should prepare SOPs for the registration of manufacturers and traders, and these would be forwarded to the FBR for final approval. She said that the FBR was making a concerted effort to facilitate genuine businessmen and would continue to do so with the cooperation of the Chambers of Commerce and Industry.

Meher, while appreciating the positive response of the chief commissioner said that the LCCI would have a meeting with all the stakeholders soon for the preparation of SOPs.

He said that it was very unfortunate that some black sheep in the FBR were trying to nullify efforts aimed at tax net expansion.

He explained that when a businessman applies for new sales tax registration for setting up a new industry these elements deliberately make him run from pillar to post.

Meher further said that adequate information is not provided to the machinery importers thereby causing long delays. Machinery lying at ports adds heavy demurrage & detention charges to unit cost which is not anticipated in the feasibilities, he said.

This was the main reason that the FBR had failed to increase the number of taxpayers registered in the sales tax net, he said.

He pointed out that the process of conversion of the status of sales tax registration from individual to company was also long and cumbersome. – *Courtesy The News*

Cases of inadvertence: time limit for assessment, recovery of ST enhanced

The time limit for assessment and recovery of sales tax in case of inadvertence, error and mistake by the registered taxpayer has been increased from three years to five years through a major amendment in the Sales Tax Act 1990 under the Finance Bill (2012-13). Experts told here on Wednesday that the extension of timely limit for recovery in cases of inadvertence and unintentional mistake was seriously criticized by the trade and industry.

The representatives of the trade have argued that the time limit of 5 years provided in case of a fraudulent act committed by a person. On the other hand, the FBR has proposed amendment in the Sales Tax Act by treating both acts of inadvertence and fraudulent with same yard stick has no justification. The issue was reportedly taken up by the representatives of business community during the last visit of Chairman FBR to Karachi after budget (2012-13). Tax authorities have shown their concurrence and assured business and trade that the legal position of section 11 of the Sales Tax Act would be reverted to its original status prior to Finance Bill (2012-13).

Following is the text of the proposed amendment in section 11 of the Sales Tax Act through Finance Bill (2012-13): Where a person who is required to file a tax return fails to file the return for a tax period by the due date or pays an amount which, for some miscalculation is less than the amount of tax actually payable, an Officer of Inland Revenue shall, after a notice to show cause to such person, make an order for assessment of tax, including imposition of penalty and default surcharge in accordance with section 33 and 34.

Provided that where a person required to file a tax return files the return after the due date and pays the amount of tax payable in accordance with the tax return along with default surcharge and penalty, the notice to show cause and the order of assessment shall abate.

Where a person has not paid the tax due on supplies made by him or has made short payment or has claimed input tax credit or refund which is not admissible under this Act for reasons other than those specified in sub-section (1), an Officer of Inland Revenue shall, after a notice to show cause to such person, make an order for assessment of tax actually payable by that person or

determine the amount of tax credit or tax refund which he has unlawfully claimed and shall impose a penalty and charge default surcharge in accordance with section 33 and 34.

Where by reason of some collusion or a deliberate act any tax or charge has not been levied or made or has been short-levied or has been erroneously refunded, the person liable to pay any amount of tax or charge or the amount of refund erroneously made shall be served with a notice requiring him to show cause for payment of the amount specified in the notice.

Where, by reason of any inadvertence, error or misconstruction, any tax or charge has not been levied or made or has been short-levied or has been erroneously refunded, the person liable to pay the amount of tax or charge or the amount of refund erroneously made shall be served with a notice requiring him to show cause for payment of the amount specified in the notice: Provided that, where a tax or charge has not been levied under this sub-section, the amount of tax shall be recovered as tax fraction of the value of supply.

It said that the no order under this section shall be made by an Officer of Inland Revenue unless a notice to show cause is given within five years, of the relevant date, to the person in default specifying the grounds on which it is intended to proceed against him and the officer of Sales Tax shall take into consideration the representation made by such person and provide him with an opportunity of being heard:

Provided that order under this section shall be made within one hundred and twenty days of issuance of show cause notice or within such extended period as the Commissioner may, for reasons to be recorded in writing, fix provided that such extended period shall in no case exceed ninety days:

Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the petitioner not exceeding sixty days shall be excluded from the computation of the period specified in the first proviso.

(6) Notwithstanding anything in sub-section (1), where a registered person fails to file a return, an officer of Inland Revenue not below the rank of Assistant Commissioner shall subject to such conditions as specified by the Federal Board of Revenue, determine the minimum tax liability of the registered person.

(7) For the purpose of this section, the expression "relevant date" means;

(a) the time of payment of tax or charge as provided under section 6; and;

(b) in a case where tax or charge has been erroneously refunded, the date of its refund. – *Courtesy The News*

Revenue loss of Rs 1.4 billion: Customs activity badly hurt by Karachi strike

The strike call given by All Karachi Tajir Ittehad (AKTI) against extortion and traders' killings has caused activity at the Customs House, Karachi, to shrink to 30 per cent, resulting in a revenue loss of at least Rs 1.4 billion to the national exchequer. The attendance at Customs House remained normal but importers and exporters did not turn up because of the strike call.

Although no major untoward incident was reported on Wednesday, the country's financial hub was completely paralysed after a major Karachi-based political party supported the strike. Later, other political parties, local transporters' associations, petroleum dealers and others joined the traders' strike to express resentment against unabated incidents of extortion in the city. Subsequently, the civic life in the country's commercial hub came to a grinding halt, as all petrol pumps, shops and hotels across the metropolis remained closed between dawn and dusk. Even small vendors and public transport remained off the roads, forcing people to stay inside their homes.

Examinations in the Federal Urdu University of Arts, Science and Technology, Board of Intermediate, Sindh Board of Technical Education and Jinnah College for Women were postponed and the attendance in private and government offices remained thin.

Customs sources told that traders and their clearing agents filed Goods Declarations (GD) in low numbers, pointing out that the filing of declarations was possible online. They said traders were unable to take their cargo consignments from the port area because of the unavailability of public transport.

A Customs official said that all collectorates at Karachi Port and Port Qasim registered the same situation in connection with the filing of goods declarations. According to him, on an average, 500-600 export goods declarations are filed every day, adding that 400-450 such decalarations are filed electronically every day. The

department, he said, collected a revenue of Rs 400-450 million per day. He said that the number of goods declarations filed in appraisement and preventive collectorates "is almost double" against other collectorates where containers with full load (FCL) and containers with loose load (LCL) were handled. – *Courtesy Business Recorder*

Power, gas consumption by new applicants: ST zero-rating facility linked to certification by LTUs, RTOs

The Federal Board of Revenue (FBR) will not allow sales tax zero-rating facility on electricity and natural gas consumed by new applicants of five zero-rated sectors where Large Taxpayer Units (LTUs) and Regional Tax Offices (RTOs) have not certified that registered persons have correctly discharged their sales tax liabilities.

Sources told on Wednesday that the Board would not allow sales tax zero-rating facility on electricity and natural gas by new applicants till the field formations issue the said certificates. As per SRO125(1)/2011 dated December 31, 2011, all registered person of the five zero-rated sectors are required to charge sales tax at reduced rate of 5% on sales to unregistered persons, persons registered in non zero-rated sectors or to retailers, on the goods mentioned in the table of the said SRO. However, the data revealed that this liability is not being correctly discharged by the registered persons.

The FBR has, therefore, decided that, as a first step, audit/scrutiny of the records of the registered person availing facility of zero-rating on electricity and gas under various sales tax general orders (STGOs) is being conducted by the respective RTOs/LTUs, to check as to whether the liability of sales tax @ 5% or 16%, as the case may be, has been correctly discharged by these registered persons.

In case, it is found that the registered persons have not correctly discharged their liabilities of sales tax, then RTOs/LTUs would recommend withdrawal of facility of zero-rating on electricity and gas from these units. The initial exercise has been started in the field formations and reports are being sent to the Board with recommendations that the facility of zero-rating on electricity and gas may be continued or the facility may be withdrawn. In cases where RTOs/LTUs recommend withdrawal of facility of zero-rating, thorough audit of the last one year would also be conducted by the LTUs/RTOs.

Sources said that it has also been decided that all future requests of availing the facility of zero-rating on electricity and gas shall only be entertained at the FBR, if the same is accompanied by the certification from the RTO/LTU that the registered person has been correctly discharging the liabilities of sales tax especially sales tax @ 5% under SRO 1125(1)/2011.

Certain reports received from RTO, Karachi and LTU, Karachi has been returned by the FBR for re-submission along with the report of audit/scrutiny that these persons have correctly discharged their liabilities of sales tax, they added. When contacted, a tax expert said that the new applicants of sales tax zero-rating facility on electricity and natural gas of five zero-rated sectors are facing difficulties in processing of their documents.

There is a delay in issuance of sales tax zero-rating facility on electricity and natural gas consumed by new applicants of five zero-rated sectors. The Large Taxpayer Units and Regional Tax Office have to submit the certificates that the registered person has been correctly discharging the liabilities of sales tax especially sales tax @ 5% under SRO 1125(1)/2011. Without such certificate, the registered person cannot avail the sales tax zero-rating facility from the Board. – *Courtesy Business Recorder*

Seminar on 'role of post clearance audit in facilitation of trade' held

A seminar on the "Role of post clearance audit in trade facilitation", organised by Directorate General of PCA in collaboration with Directorate General of Training and Research (Customs), was held at Directorate of Training Karachi on June 13.

The seminar was presided by Chief Collector Customs (South) and attended by representatives of Federation of Pakistan Chamber of Commerce Industry Karachi, Chamber of Commerce and Industry Karachi, Custom Clearing Agents Association and large numbers of Customs Officers/officials and tax consultants. The targeted audience included importers, Exporters, Customs Agents, representatives of Trade Association and officials of the customs department.

The officers of the Directorate of Post Clearance Audit made presentations in the seminar. Sanaullah Abro, Deputy Director gave presentation on 'Customs Modernisation and PCA' and PCA

Deputy Director Mohammad Ashfaq Khan gave presentation on 'Trade Facilitation and PCA'. In the presentations, the need and importance of PCA was highlighted and it was stressed that frontline checks on clearance of goods needed to be shifted at post clearance stage to achieve the objectives of trade facilitation, immediate clearance and economic development.

Mohammad Usman, Advisor to Customs Committee of KCCI, shared his views on process of PCA. His views were supported by Saifullah Khan, President Karachi Custom Clearing Agents Association. FPCCI Vice President Shakeel Ahmed Dingra, during his speech, highlighted the need of facilitation of trade and about streamlining and transparency in audit.

In the end of seminar, Amir Muhammad Khan Marwat, Chief Collector of Customs (South), in his remarks highlighted the importance of PCA in trade facilitation. He mentioned that PCA was necessary for the success of any automated clearance system and Post Audit function would ensure the successful operation of WeBOC. He stated that robust and vibrant PCA was essential for modernisation of Customs in Pakistan. – *Courtesy Business Recorder*

Share in divisible pool: Punjab expects federal receipts of Rs 650,735 million

The centre's transfers from the Federal Divisible Pool Taxes to the Punjab government are expected to increase to Rs 650,735.911 million during the financial year 2012-13. The Punjab government calculated this in its budget document for 2012-13.

"Because of an increase in the nominal size of the Federal Divisible Pool, transfers to Punjab are expected to increase to Rs 650, 735.911 million during FY 2012-13 against budget estimates for FY 2011-12 of Rs 531,528.327 million," the budget document said.

The share of the Divisible Pool Taxes for FY 2012-13 is based on the Federal Board of Revenue's (FBR) target of Rs 2,381,000 million. This would actually mean that the budget estimates 2012-13 are likely to be 22 percent higher than the revised estimates for 2011-12.

Under the 7th National Finance Commission Award, the percentage share of the provinces in the Divisible Pool is 57.50 percent with effect from FY 2011-12. Under this award, the Divisible Pool now comprises taxes on income, customs, duties,

sales tax, federal excise excluding excise duty on gas charged at well head, and any other tax levied by the federal government.

According to the budget document, major increase in the Divisible Pool Taxes is expected from the Income Tax and Sales Tax. These two taxes collectively contribute 83.6 percent of Punjab's share from the Federal Divisible Pool. Land Customs and Federal Excise contribute the balance 16.4 percent.

The Punjab budget estimates 2012-13 of Straight Transfers have been pitched at Rs 6,585.092 million compared to budget estimates of Rs 5,423.944 million in 2011-12. Straight Transfers comprise a smaller portion of the financing package to Punjab by comparison with other provinces such as Sindh and Balochistan.

Under Article 161 of the Constitution and the NFC Award, Straight Transfers to provinces include the net proceeds of the federal excise duty on natural gas and the net proceeds of royalty on crude oil and natural gas assigned to the provinces. The Punjab budget estimates 2012-13 of Federal Grants at Rs 2,147 million against budget estimates of Rs 4,506.387 million in 2011-12. The provincial government is expected to receive project grants worth Rs 117 million, whereas estimates of Federal Grants have been pitched at Rs 2,030 million. – *Courtesy Business Recorder*

17 days remaining: FBR to collect Rs 287 billion to meet revenue target

The Federal Board of Revenue (FBR) is facing an uphill task to collect Rs 287 billion in the remaining 17 days of June 2012 to meet the revenue collection target of Rs 1,952 billion, requiring an extraordinary growth of around 45-50 percent.

Sources told here on Wednesday that the FBR has provisionally collected over Rs 1,665 billion during July 2011-June 13, 2012 against Rs 1,348 billion in the corresponding period of last fiscal, reflecting a growth of 24 percent. As compared to the ambitious revenue collection target of Rs 1,952 billion for 2011-2012, the tax machinery has been able to collect over and above Rs 1,665 billion during July 2011-June 13, 2012.

This clearly shows that the FBR has to collect Rs 287 billion in the remaining days of June 2012. During last year, the FBR had collected approximately Rs 232 billion during June 2011. The remaining target of Rs 287 billion is not a small figure, but it

would be very difficult and challenging for the FBR to collect Rs 287 billion in the remaining 17 days of current month.

Taking into account the figure of Rs 287 billion for amassing target of Rs 1,952 billion by the end of current month, around 45-50 percent growth in revenue would be required in remaining days of June 2012. The budgetary target of Rs 1,667 billion was downward revised to Rs 1,604 billion during 2010-11. The revised target of Rs 1,604 billion was further scaled down to Rs 1,588 billion in 2010-11.

The net revenue collection of the FBR stood at Rs 1,550 billion for 2010-11 against thrice revised target of Rs 1,588 billion. On the other hand, the FBR has not even revised downward revenue collection target of Rs 1,952 billion set in budget 2011-12. The tax machinery is making day and night efforts to cross the psychological barrier of Rs 1,952 billion by the end of current fiscal.

Even the revenue projections for current fiscal have not been revised once. The latest data itself speaks of the efforts made by the FBR to reach the figure of Rs 1,952 billion during current fiscal without slashing the said budgetary tax projections.

The FBR team headed by FBR Chairman Mumtaz Haider Rizvi is trying its level best to meet the target, but the slowdown in business activities, load shedding and undocumented economy has impact on the overall revenue collection of the FBR. The FBR and its tax machinery has no control over the economic indicators and law and order situation having direct impact on the overall revenue collection during current fiscal. – *Courtesy Business Recorder*

Annual turnover up to Rs five million: Income tax return form for retailers simplified

The Federal Board Revenue has issued a simplified one-page income tax return form for the retailers having annual turnover upto Rs 5 million to encourage retail sector to voluntarily file their returns. In this connection, the FBR has issued SRO.727(I)/2012 to issue the draft of the new income tax return forms for individuals and Association of Persons (AOPs) for Tax Year 2012.

The FBR has given time period of 15 days to the stakeholders to submit their input on the proposed return forms. The FBR will notify the return forms in the official gazette taking into account

viewpoint of stakeholders. The FBR has introduced IT-4 return form for retailers having annual turnover up to Rs 5 million, but not having any other taxable source of income. The retailers would only have to mention the opening stock, net sales during the year, closing stock, turnover tax payable and turnover tax Paid and other related information.

Sources told that the unique feature of the new return form is that the FBR for the first time issued a simplified return form for the retailers having annual turnover up to Rs 5 million. For small and medium retailers, the Board has issued a one-page return form which would improve compliance and encourage documentation. At present, the retailers are reluctant to come forward and file the income tax return forms.

Now, the retailers can easily fill the return form without seeking help of the tax officers, tax consultants, lawyers and chartered accountants. The retailers can themselves file the one-page returns without the help of the tax experts. This would encourage voluntarily return filing by the retails sector. In the presence of the simplified return form, the documentation of the retailers would be improved as it is very easy to fill the simplified returns form by the retailers, who are operating out of the tax net. – *Courtesy Business Recorder*

Cases under FTR: KTBA for withdrawal of board's policy concession

Karachi Tax Bar Association (KTBA) has expressed grave concern over the withdrawal of the board's policy concession for cases covered under Final Tax Regime (FTR). According to the letter issued to chairman Federal Board of Revenue (FBR), the withdrawal of FBR policy concession for cases covered under FTR given vide FBR letter C.No 4936 ITP/2002 dated October, 5th 2009 was made without any consultation through the circular no.4(36)ITP/2002 dated April, 2 2012.

The association said that the cases of importers/ exporters, contractors etc are covered under section 153, where a person's earning income from dividends, interest income are covered under FTR and in these cases, tax is deducted at source by financial institutions and the same is final discharge of tax liability irrespective of the fact whether a tax payer has earned profit and/or suffered loss.

It further said the Bar had made representations to the board in 2009 when field tax offices attempted to select cases of exporters/importers etc which were covered by FTR for audit. The member direct tax (policy) after deliberations issued policy directions to the field offices that if the cases were covered under FTR, no audit should be conducted until any discrepancy was found.

Expressing concern over the issue, the association said that the withdrawal of FBR policy decision of October, 5 2009 without consultation could be counter productive and lead to unnecessary harassment and added that the said decision would not generate revenue but would cause to harass the taxpayers. The association also urged the chairman FBR to look into the matter and make suitable amendments to facilitate the taxpayers at maximum. – *Courtesy Business Recorder*

SRB seeks to enhance prowess through support

Sindh Revenue Board (SRB) has asked the International Finance Corporation (IFC) World Bank group, to give technical and financial support in order to strengthen the functions of provincial sales-tax-collection-body, and a proposal in this regard had been moved to IFC authorities a few weeks back. The authorities of SRB had moved a proposal to the IFC on the offer which IFC gave during a meeting held at SRB head office on May 14, sources said.

A mission of IFC comprising Abdul Hakim N K Assad, Mohamed H Baider and Asfandyar Ali Khan had visited the SRB head office and held discussion with SRB authorities over possibility of identifying a project on administration of tax collection, on sales tax on services future roadmap, and needs of the SRB and IFC, if any required in the matter of capacity building, sources said.

Former Chairman SRB Nazar Hussein Mehar apprised the mission about the background leading to the establishment of SRB, registration of taxpayers and collection matters, response of taxpayers, automation systems developed by SRB itself, future road map and needs of SRB.

The Mission enquired in detail about the registration process and the transfer of data, its current status. The Mission was informed that the SRB had a strong registration system which registered the persons by use of their National Tax Number (NTN) because all persons liable to be registered under the Sindh Sales Tax on

Services Act 2011. They were also told that SRB and FBR had a mutual agreement to access each other's data, sources further informed.

The IFC mission had showed interest to help-out the SRB in future particularly in areas of tax collection - how to check sales tax on services evasion/avoidance, develop and support the capacity to monitor and track transactions, develop and support the capacity to conduct risk based audits, support for different IT solutions for administering tax collection by road mapping IT based needs and prioritising them for implementation in phases, sources told. In this connection, a high level official told that SRB had sent proposal to IFC but reply had not came yet. – *Courtesy Business Recorder*

SRB-3-4/Legal/2012/5027, Karachi, the 23rd May, 2012.– In exercise of the Powers conferred by sub-section (1) of Section 34 read with section 35 of the Sindh Sales Tax on Services Act, 2011, (Act No. – XII of 2011), the Sindh Revenue Board (SRB) is pleased to designate Senior Auditor of the SRB, to be the officer of the SRB in the matter of calling information, for analyzing such information and preparing the reports thereon, under the provisions of sub-section (2) of Section 27, sub-section (2) of section 28, and sub-section (2) section 52, of the Sindh Sales Tax on Services Act, 2011.

SRB-3-4/8/2012, Karachi, the 6th June, 2012.– In exercise of the powers conferred by section 45 of the Sindh Sales Tax on Services Act, 2011 (Sindh Act No. XII of 2011), the Sindh Revenue Board, with the approval of the Government of Sindh, is pleased to exempt whole of the amount of penalty and default surcharge payable by a person who has failed to pay any amount of Sindh sales tax or against whom an amount of Sindh sales tax is outstanding on account of any non-payment or short payment of the tax as was payable under the Sindh Sales Tax Ordinance, 2000 (Sindh Ordinance No. VIII of 2000), or under the Sindh Sales Tax on Services Act, 2011, due to any reason, including audit observation or show cause notice or adjudication order or assessment order or appellate order or inadmissible input tax credit or adjustment, subject to the condition that the principal amount of Sindh sales tax is paid by him on or before the 15th June, 2012. The penalties involved for the offences of non-registration and non-filing of tax returns shall also be exempt provided the person registers himself with the SRB on or before the 15th June, 2012, and e-files the prescribed tax returns for the tax periods upto May, 2012, on or before the 15th June, 2012:

Provided that this notification shall not apply for the refund of any penalty or default surcharge as has been paid by any person before the date of this notification.

No. NBFCD/CIRCULAR/175/2012 Islamabad, the 11th June, 2012

SECP CIRCULAR NO. 19/2012

Subject: **Procedure for convening meeting of the unit holders of Open End and Close End Collective Investment Schemes.**

The Regulation 41(q) of Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the "Regulations"), empowers the trustee of an Open End Scheme and Close End Scheme ("CIS" or "schem") to call a meeting of unit holders, in such manner as specified by the Commission through circular:–

(i) Whenever required to do so by the Commission in the interest of the unit holders; or

(ii) Whenever required to do so as per the requirements of the Regulations.

Therefore, in addition to the requirements as stipulated by the Regulations for the meeting of unit holders, the Commission, in exercise of the powers conferred under section 282B(3) of the Companies Ordinance, 1984 read with Regulation 41(q) of the Regulations, prescribes the following procedure for convening meeting of the unit holders of a scheme.

GENERAL

1. Asset Management Company (AMC) managing the scheme shall be responsible for conducting and chairing the meeting of the unit holders. The trustee of a scheme shall attend every meeting of unit holders and ensure that all the requirements as specified by the Regulations for convening the meeting of unit holders are complied with. The unit holders of a scheme may cast vote on a resolution by physical presence in the meeting or through proxy or by post.

NOTICE OF UNIT HOLDERS' MEETING

2. An AMC shall send through registered post or courier service, notice of meeting of unit holders to each unit holder at his / her registered address along with Proxy Form and a voting paper (Annexure A) at least 7 working days prior to the date of such meeting. Such notice of the meeting shall also be published by the AMC in one issue each of daily newspaper in English and Urdu language having circulation all over Pakistan.
3. In case of joint unit holders, the notice shall be sent to the address of the joint holder whose name appears first in the record with the AMC and / or its Registrar / Transfer Agent.
4. The notice of the meeting shall specify complete information about unit holders' meeting such as date / time / venue of the meeting, purpose of the meeting (statement of material facts and other pertinent documents) and requirements for attending unit holders' meeting and voting mechanism. Notice shall also be sent by the AMC to the trustee and the Commission.
5. The notice of the meeting shall also include a postage pre-paid envelope for facilitating the communication of the assent / dissent of the unit holder(s) to the resolution by post. The self-addressed envelope shall bear the complete address of the Trustee (with the name of the CIS) as scrutinizer.

PROXY FORMS

6. Unit holders of CIS shall submit filled and signed Proxy Form to the AMC along with attested copies of their CNICs. Proxy

holder may not necessarily need to be a unit holder of the concerned CIS.

7. Proxy Form shall be witnessed by two persons with their names, addresses and CNIC numbers duly mentioned on the proxy form.
8. In case of other than individuals, the resolution of Board of Directors / power of attorney with specimen signature(s) of authorized person shall be submitted to the AMC along with proxy form.
9. Proxy forms must be received by the AMC one day prior to the meeting.
10. AMC shall affix receiving stamp (mentioning date and time) and signature on each proxy form.
11. Proxy form shall not be accepted in case the unit holder has opted to vote by post.

VOTING T[1] BY POST

12. Unit Holder(s) desiring to vote by post, instead of physical presence in the meeting may fill up and complete the voting paper (Annexure A) and send it to the Trustee.
13. Voting paper shall be completed and signed by the unit holder(s) as per specimen signature(s) provided to the AMC / its Registrar / Transfer Agent.
14. Original voting paper should reach the trustee of the CIS not later than one day prior to the meeting for consideration by the trustee.
15. The Trustee shall compile the assent/dissent to the resolution received by post mentioning the particulars, i.e. names, folio numbers, number of units held by the unit holder, etc. The Trustee shall finalize its report before the commencement of the unit holders' meeting.

PROCEEDINGS OF UNIT HOLDERS' MEETING

16. Only those unit holders shall be eligible to attend and vote at the meeting whose names appear in the unit holders' register of the concerned scheme on the date immediately preceding the date of the unit holders' meeting.
17. An AMC or Registrar / Transfer Agent ("R/TA") shall record attendance of all the unit holders / proxy holders present in the meeting with complete list of unit holders of the scheme and specimen signatures of unit holders or any officer of corporate unit holders.
18. After taking attendance, an AMC or its R/TA shall provide one Voting Paper (Annexure-B) to every unit holder / Proxy holder

[1] The word "T" is superfluous.

for his / her filling and signing to cast his / her vote on the proposal. In case of joint holder(s) only one voting paper shall be issued and in case the meeting is attended by more than one joint holder, then the person whose name appears first in the register of unit holders shall be eligible to cast the vote.

19. After completing and signing the voting paper, each unit holder shall submit duly filled and signed voting papers.
20. AMC or its R/TA shall count the voting papers, verify contents on voting paper including unit holding and shall perform signature verification.
21. Trustee shall scrutinize and consolidate the data including the details compiled by it on the basis of the voting papers received by post.
22. The trustee shall submit its report to chairperson of the meeting. The chairperson shall on the basis of summarized voting results, shall announce the final result of the meeting.

CRITERIA FOR REJECTION OF PROXY/VOTING PAPERS

23. The following are the basic criteria for rejection of Proxy/ Voting Papers in meeting:
    - More than one Voting Paper is cast by a single unit holder / Proxy holder.
    - Overwriting / cutting on Voting Paper.
    - Unsigned Voting Paper.
    - Signature of unit holder affixed on proxy form does not match with the specimen signature available in the AMC or its R/TA records.
    - More than one proxy form is lodged by a unit holder in favor of more than one Proxy holder. In this case, all proxies shall stand rejected.
    - More than one proxy form is lodged by a unit holder in favor of one Proxy holder. In this case, only one proxy shall be accepted.
    - Photocopy of CNIC is not provided by Proxy holder.
    - Proxy forms are not witnessed by two persons mentioning their names, addresses and CNIC numbers.
    - Proxy form is received after the given time limit, i.e. not one day prior to the meeting.
    - Proxy form submitted by an institutional investor is not supported by the resolution of Board of Directors / power of attorney authorizing their representative to attend and vote in the meeting.

- Overwriting / corrections on Proxy Form which are not supported by unit holder's / Proxy holder's signature.

OTHERS

24. Minutes of the meeting of unit holders shall be prepared and signed jointly by the trustee and the AMC of the scheme.
25. Minutes of the meeting duly signed along with resolution passed by majority representing three fourths in value of the total outstanding units of the concerned scheme shall be sent by the trustee to the Commission within seven working days of the meeting.
26. All expenses incurred in convening unit holders' meetings shall be charged to the CIS.
27. Neither the AMC nor the Trustee shall be liable or responsible in any manner in case a voting paper duly dispatched is not received by the unit holder(s) or the duly filled and signed voting paper is not received by the trustee due to delay on part of the postal department or courier service or due to any other reason beyond the control of the AMC and / or the Trustee.

Annexure-A

Sample Voting Paper for voting through post

Unit Holder's meeting
Date:
Time:
Place:

Name of Unit Holder: ____________________
Folio/Account/CDS Account # of Unit Holder:
No of units held:
____

INSTRUCTION FOR VOTING

PLEASE INDICATE YOUR VOTE BY SIGNING THE RELEVANT BOX OF THE SELECTED OPTION

1. IN FAVOUR OF RESOLUTION: [ ]
2. AGAINST RESOLUTION: [ ]

Annexure-B

Sample Voting Paper for unit holders who are physically present in the

Unit Holder's meeting
Date:
Time:
Place:

Name of Unit Holder: ____________________
Folio/Account/CDS Account # of Unit Holder:
No of unit held:
____
Voting as unit holder: No of Units: ____________
Voting as proxy: No fo Units: ____________
____

INSTRUCTION FOR VOTING

PLEASE INDICATE YOUR VOTE BY SIGNING THE RELEVANT BOX OF THE SELECTED OPTION

1. IN FAVOUR OF RESOLUTION: [ ]

2. AGAINST RESOLUTION: [ ]

No. NBFCD/178/2012 Islamabad, the 11th June, 2012

SECP CIRCULAR NO. 20/2012

Subject: **Restriction of sharing of management fee by AMCs with Unit holders.**

The practice of sharing management fee earned by Asset Management Companies (AMCs) on Collecitve Investment Schemes (CIS) with the unit holders of CIS prevails in the mutual fund industry. This practice is considered as one of the factors that hampers the broadening of investor base which is imperative for sustainable growth of the mutual fund industry. Upon deliberation of this issue and considering the feedback of Mutual Funds Association of Pakistan (MUFAP), the Commission in exercise of powers conferred under section 282D of the

Companies Ordinance 1984, hereby directs all AMCs to comply with the following instructions:–

a) AMCs shall not share, directly or indirectly, the management fee earned on CIS under its management with any of the unit holders of such CIS in any form whether in cash or in kind; and

b) AMCs, while entering into an agreement with the distributor of Mutual Funds, shall ensure that such distributor does not share commission/fee in any form with the underlying unit holders of a CIS. Whenever an AMC becomes aware of any distributor sharing commission/fee received from AMCs with its clients (i.e. unitholders of CIS), the AMC shall immediately report the same to MUFAP which may consider cancellation of registration of such distributor.

This direction shall come into force with immediate effect and all the AMCs are required to ensure meticulous compliance in letter and spirit. Any violation/circumvention of this direction shall be dealt with in accordance with the relevant provision of the Companies Ordinance 1984.

S.R.O. 727(I)/2012, Islamabad, the 12th June, 2012.– The following draft of further amendment in the Income Tax Rules, 2002, which the Federal Board of Revenue proposes to make in exercise of the powers conferred by sub-section (1) of section 237 of the Income Tax Ordinance, 2001 (XLIX of 2001), is hereby published for he information of all persons likely to be affected thereby, as required by sub-section (3) of the said section, and notice is hereby given that the draft will be taken into consideration after fifteen days of its publication in the official Gazette.

2. Any objection or suggestion, which may be received from any person, in respect of the said draft, before the expiry of the aforesaid period, shall be considered by the Federal Board of Revenue.

DRAFT AMENDMENT

In the aforesaid Rules, in the Second Schedule,-

(a) after “Part-I B”, the following new Parts shall be inserted, namely:–

FBR

RETURN OF TOTAL INCOME/STATEMENT OF FINAL TAXATION

UNDER THE INCOME TAX ORDINANCE, 2001 (FOR INDIVIDUAL / AOP)

IT-2 (Page 1 of 2)

N°

Registration						
Taxpayer's Name				NTN		
CNIC (for individual)				Gender	Male	Female
Business Name				Year Ending		
Business Address				Tax Year	2012	
Res. Address				Person	IND	AOP
E-Mail Address		Phone		Res. Status	Non-Res.	Resident
Principal Activity		Code		Birth Date		
Employer	NTN	Name		Filing Section		
Representative	NTN	Name		RTO/LTU		
Authorized Rep.	NTN	Name		Is authorized Rep. applicable?	Yes	No

Ownership			
NTN	Proprietor/Member/Partners' Name	% in Capital	Capital Amount
Others			
Total		100%	

	Sr.	Items		Code	Total
Manufacturing/ Trading, Profit & Loss Account (including Final/Fixed)	1	Net Sales (excluding Sales Tax/ Federal Excise Duty & Net of Commission/ Brokerage)	[to be reconciled with Annex-C]	3103	
	2	Cost of Sales [3 + 4 + 5 - 6]	[to be reconciled with Annex-C]	3116	
	3	Opening Stock		3117	
	4	Net Purchases (excluding Sales Tax/ Federal Excise Duty & Net of Commission/ Brokerage)		3106	
	5	Other Manufacturing/ Trading Expenses	[Transfer from Sr-7 of Annex-G]	3111	
	6	Closing Stock		3118	
	7	Gross Profit/ (Loss) [1-2]	[to be reconciled with Annex-C]	3119	
	8	Other Revenues/ Fee/ Charges for Professional and Other Services/ Commission		3131	
	9	Profit & Loss Expenses	Transfer from Sr-24 of Annex-G]	3189	
	10	Net Profit/ (Loss) [(7 + 8) - 9]		3190	
Adjustments	11	Inadmissible Deductions	[Transfer from Sr-22 of Annex-E]	3191	
	12	Admissible Deductions (excluding tax depreciation/ including proportionate FTR income	[to be reconciled with Annex-?]	3192	
	13	Unadjusted Loss from business for previous year(s)	[Transfer from Sr. 27 of Annex-A]	3902	
	14	Un-absorbed Tax Depreciation for previous/ current year(s)		3988	
Total / Taxable Income Computation	15	Total Income [Sum of 16 to 21]		9099	
	16	Salary Income		1999	
	17	Business Income/ (Loss) [(10 + 11) - 12 - 13 - 14]		3999	
	18	Share from AOP [Income/(Loss)]		312021	
	19	Capital Gains/(Loss) u/s 37		4999	
	20	Other Sources Income/ (Loss)		5999	
	21	Foreign Income/ (Loss)		6399	
	22	Deductible Allowances [23 + 24 + 25]		9139	
	23	Zakat		9121	
	24	Workers Welfare Fund (WWF)		9122	
	25	Workers Profit Participation Fund (WPPF)		9123	
	26	Charitable donations admissible as straight deduction		9124	
	27	Taxable Income/ (Loss) [15 - 22]		9199	
	28	Exempt Income/ (Loss) [Sum of 29 to 34]		6199	
	29	Salary Income		6101	
	30	Property Income		6102	
	31	Business Income/ (Loss)		6103	
	32	Capital Gains/(Loss)		6104	
	33	Agriculture Income		6106	
	34	Other Sources Income/ (Loss)		6105	
Tax Computation	35	Tax chargeable on Taxable Income	@	9201	
	36	Tax Reductions/Credits/Averaging (including rebate on Behbood Certificates, etc.) (from Annex xxx)		9249	
	37	Difference of minimum Tax Chargeable on business transactions [37(e)(v) minus 37(e)(iii)]		9303	

		(i)	(ii)	(iii)	(iv)		(v)
		Import value/services receipts subject to collection or deduction of tax at source	Proportionate Chargeable Income	Proportionate tax*	Rate	Minimum tax	Higher of (iii) or (iv)
(a)	Import of Edible Oil U/S 148(8)				3%		
(b)	Import of Packing Material U/S 148(8)				5%		
(c)	Transport Services U/S 153(1)(c)				2%		
(d)	Other Services U/S 153(1)(b)				6%		
(e)	Total						

*[(35 minus 36) divided by 27 multiply by 37(a)(ii) or 37(b)(ii) or 37(c)(ii) or 37(d)(ii), as the case may be]

	Sr.	Items	Code	Total
Tax Computation	38	Minimum tax on electricity consumption under section 235(4) Amount of tax collected alongwith electricity bill where the monthly bill amount is upto Rs. 30,000	9304	
	39	Balance tax chargeable [(34 minus 35 plus 36) or 37, whichever is higher	9305	
	40	Difference of minimum Tax Chargeable U/S 113 [39(iv) minus 38, if greater then zero, else zero] (i) Total Turnover	(iii) Reduction @	- (ii) Minimum tax @ 1% -	(iv) Net Minimum tax -	9306	
	41	Net tax chargeable [38 + 39 + 85]	9307	
	42	Total Tax Payments (Transfer from Sr. 28 of Annex-B)	9499	
	43	Tax Payable/ Refundable [40 - 41 + WWF Payable from Sr. 29 of Annex-B]	9999	
	44	Refund Adjustments (not exceeding current year's tax payable)	9998	
	45	Annual personal expenses for individual only (transfer from Sr. 12 of Annex-D)	6109	

Refund

Net Tax Refundable, may be credited to my bank account as under:

A/C No.

Bank Branch Name & Code

Signature

FBR	RETURN OF TOTAL INCOME/STATEMENT OF FINAL TAXATION UNDER THE INCOME TAX ORDINANCE, 2001 (FOR INDIVIDUAL / AOP)	IT-2 (Page 2 of 2) N°

Taxpayer's Name		NTN	
CNIC (for individual)		Tax Year	2012
Business Name		RTO/LTU	

	No.	Source	Code	Receipts/Value	Rate (%)	Code	Tax Chargeable
Final Tax	46	Imports	64013		5	92013	
	47		64011		2	92011	
	48		64012		1	92012	
	49		64015		3	92015	
	50	Dividend	64032		10	92032	
	51		64033		7.5	92033	
	52	Profit on Debt	64041		10	92041	
	53	Royalties/Fees (Non-Resident)	640511		15	920511	
	54		640512			920512	
	55	Contracts (Non-Resident)	640521		6	920521	
	56	Insurance Premium (Non-Resident)	640524		5	920524	
	57	Advertisement Services (Non-Resident)	640525		10	920525	
	58	Supply of Goods	640611		3.5	920611	
	59		640612		1.5	920612	
	60		640613			920613	
	61	Payments to Ginners	640614		1	920614	
	62	Contracts (Resident)	640631		6	920631	
	63	Exports/related Commission/Service	640641		0.5	920641	
	64		64072		1	92072	
	65	Foreign Indenting Commission	64075		5	92075	
	66	Prizes/Winnings of cross word puzzles	64091		10	92091	
	67	Winnings - Others	64092		20	92092	
	68	Petroleum Commission	64101		10	92101	
	69	Brokerage/Commission	64121		10	92121	
	70	Advertising Commission	64122		5	92122	
	71	Services to Zero rated taxpayers U/S 153(1)(b)	64123		1	92123	
	72	Goods Transport Vehicles				92141	
	73	Gas consumption by CNG Station	64142		4	92142	
	74	Distribution of cigarette and pharmaceutical products	64143		1	92143	
Fixed Tax	75	Retail Turnover upto 5 million	310102		1	920202	
	76	Retail Turnover above 5 million	310103			920203	
	77	Property Income	210101			920235	
	78	Capital gains on Securities held for < 6 months	610401		10	951041	
	79	Capital gains on Securities held for >= 6 months and < 12 months	610402		8.00	951042	
	80	Capital gains on Securities held for >= 12 months	610403		0	951043	
	81	Purchase of locally produced edible oil	310431		2	920208	
	82	Flying Allowance	112001		2.5	920234	
	83	Services rendered / contracts executed outside Pakistan	63311		1	920236	
	84	Employment Termination Benefits	116301			920211	
	85	**Final/Fixed Tax Chargeable (46 to 84)**				9202	

Verification

I, ______________________________

holder of CNIC No. ______________________, in my capacity as

____

Self/ Partner or Member of Association of Persons/ Representative (as defined in section 172 of the Income Tax Ordinance, 2001) of Taxpayer named above, do solemnly declare that to the best of my knowledge and belief the information given in this Return/Statement u/s 115(4) and the attached Annex(es), Statement(s), Document(s) or Detail(s) is/are correct and complete in accordance with the provisions of the Income Tax Ordinance, 2001 and Income Tax Rules, 2002 (The alternative in the verification, which is not applicable, should be scored out).

Date : ______________ Signatures: ______________

Acknowledgement

Signatures & Stamp
of Receiving Officer with Date

Annex-A

Depreciation, Initial Allowance and Amortization

Tax Year: 2012

Reg/no/CNIC No.

NTN

Section	No.	Description	Code	WDV (BF)	Additions	Deletions	Rate (%)	Initial Allowance	Rate (%)	Extent (%)	Depreciation	WDV (CF)
Depreciable Assets	1	Building (all types)	3202				50%		10%			
	2	Machinery and plant (not otherwise specified)	320301				50%		15%			
	3	Computer hardware (including allied items)	320302				50%		30%			
	4	Furniture (including fittings)	320303				0%		15%			
	5	Technical and professional books	320304				50%		15%			
	6	Below ground installations of mineral oil concerns	320306				50%		100%			
	7	Off shore installations of mineral oil concerns	320307				50%		20%			
	8	Machinery and equipment used in manufacture of IT p	320308				50%		30%			
	9	Motor vehicles (not plying for hire)	32041				0%		15%			
	10	Motor vehicles (plying for hire)	32042				50%		15%			
	11	Ships	32043				50%		15%			
	12	Air crafts and aero engines	32044				50%		30%			
	13	Machinery and equipment Qualifying for 1st year Allowance	320309				90%		15%			
	14	Computer hardware including printer, monitor and allied items, that have been used previously in Pakistan	320312				0%		50%			
	15	Any plant or machinery that has been used previously in Pakistan	320310				0%		15%			
	16	Any plant or machinery in relation to which a deduction has been allowed under another section for the entire cost of the asset in the tax year in which the asset is acquired.	320311				0%		15%			
		Total										
		Description	**Code**	**Acquisition Date**	**Useful Life(Years)**	**Original Cost**				**Extent (%)**	**Amortization**	
Intangibles	17	Intangibles	3205									
	18	Expenditure providing long term advantage/benefit	3207									
	19	Total										
		Description	**Code**			**Original Expenditure**			**Rate (%)**		**Amortization**	
	20	Pre commencement expenditure	3206						20%			
		Description	**Code**	**Amount**	**Tax Year**	**Description**				**Code**	**Amount**	**Tax Year**
Brought Forward Adjustments	21	Unadjusted Business loss for previous year adjusted against Business income for current year	3902		2006	Unabsorbed Amortization of intangibles / expenditure providing long term advantage/benefit for previous year(s) adjusted against Total Income for current year				3987		upto 2011
	22	Unadjusted Business loss for previous year adjusted against Business income for current year	3902		2007	Amortization of intangibles / expenditure providing long term advantage/benefit for current year adjusted against Total Income for current year				3987		2012
	23	Unadjusted Business loss for previous year adjusted against Business income for current year	3902		2008	Unabsorbed tax depreciation/initial allowance of fixed assets for previous year(s) adjusted against Total Income for current year				3988		upto 2011
	24	Unadjusted Business loss for previous year adjusted against Business income for current year	3902		2009	Depreciation/initial allowance of fixed assets for current year adjusted against Total Income for current year				3988		2012
	25	Unadjusted Business loss for previous year adjusted against Business income for current year	3902		2010							
	26	Unadjusted Business loss for previous year adjusted against Business income for current year	3902		2011							
	27	Total (Not exceeding the amount of Business Income available for adjustment) (transfer to Sr. 13 of Main Return)				Total (Not exceeding the amount of Total Income available for adjustment) (transfer to Sr. 14 of Main Return)						

FBR

FBR

Annex-B
Tax Already Paid

2012
B

NTN | CNIC (for individual)

Tax Collected/Deducted at Source (Adjustable Tax only)

	Particulars	Code	Amount of Tax deducted (Rs.)
1	On import of goods (other than tax deduction treated as final tax)	94019	
2	From salary	94029	
3	On dividend income (other than tax deduction treated as final tax)	94039	
4	On Government securities	94043	
5	On profit on debt (other than tax deduction treated as final tax) — Certificate/Account No. etc. / Bank / Branch / Share%	94049	
6	On payments received by non-resident (other than tax deduction treated as final tax)	940539	
7	On payments for goods (other than tax deduction treated as final tax)	940619	
8	On payments for services (other than tax deduction treated as final tax)	940629	
9	On payments for execution of contracts (other than tax deduction treated as final tax)	940639	
10	On property income	940640	
11	On withdrawal from pension fund	94028	
12	On cash withdrawal from bank — Certificate/Account No. etc. / Bank / Branch / Share%	94119	
13	On certain transactions in bank	94120	
14	With Motor Vehicle Registration Fee — Registration No. / Engine / Seating Capacity / Owner's Name / Manufacturer Particulars	94179	
15	On sale/purchase of shares through a Member of Stock Exchange	94131	
16	On trading of shares through a Member of Stock Exchange	94138	
17	On financing of carry over trade	94139	
18	With motor vehicle token tax (Other than goods transport vehicles) — Registration No. / Engine / Seating Capacity / Owner's Name / Share%	94149	
19	With bill for electricity consumption — Consumer No. / Subscriber's CNIC / Subscriber's Name / Share%	94159	
20	With telephone bills, mobile phone and pre-paid cards — Number / Subscriber's CNIC / Subscriber's Name / Share%	94169	
21	On Sale by Auction	94180	
22	On purchase of domestic air travel ticket	94121	
23	**Total Tax Deductions at source (Adjustable Tax) [Sum of 1 to 22]**	94599	
24	**Total Tax Deductions at source (Final Tax)**	94591	

Tax Payments

	Particulars		Code	Amount of Tax deducted (Rs.)
25	Advance Tax U/S 147(1) [a + b + c + d]		9461	
	a. First installment	CPR No.		
	b. Second installment	CPR No.		
	c. Third installment	CPR No.		
	d. Fourth installment	CPR No.		
26	Advance Tax U/S 147(5B) [a + b + c + d]		9461	
	a. First installment	CPR No.		
	b. Second installment	CPR No.		
	c. Third installment	CPR No.		
	d. Fourth installment	CPR No.		
27	Admitted Tax Paid U/S 137(1) CPR No.		9471	
28	Total Tax Payments [23 + 24 + 25 + 26+27] (Transfer to Sr. 43 of Main Return)			
29	WWF Payable with Return (WWF payable will be adjusted against the excess payments made during the current year)		9308	

Note-1 : Grey blank fields are for official use

FBR

Annex C

Breakup of Sales in case of Multiple Businesses

	2012
	C

Taxpayer Name		NTN	0
CNIC/Reg.No.		Tax Year	2012
Business Name		RTO/LTU	0

BUSINESS WISE BREAKUP OF SALES

Sr.	Business Name & Business Activity		Sales	Cost of Sales	Gross Profit/Loss
	(1)		(2)	(3)	(4) = (2) - (3)
1	**Business Name**				
	Business Activity				
2	**Business Name**				
	Business Activity				
3	**Business Name**				
	Business Activity				
4	**Business Name**				
	Business Activity				
5	**Business Name**				
	Business Activity				
Total (to be reconciled with Sr. 1, 2 & 7 of Main Return)					

Signature:

Note : Grey blank fields are for official use

FBR

Annex - D

Details of Personal Expenses (for individual)

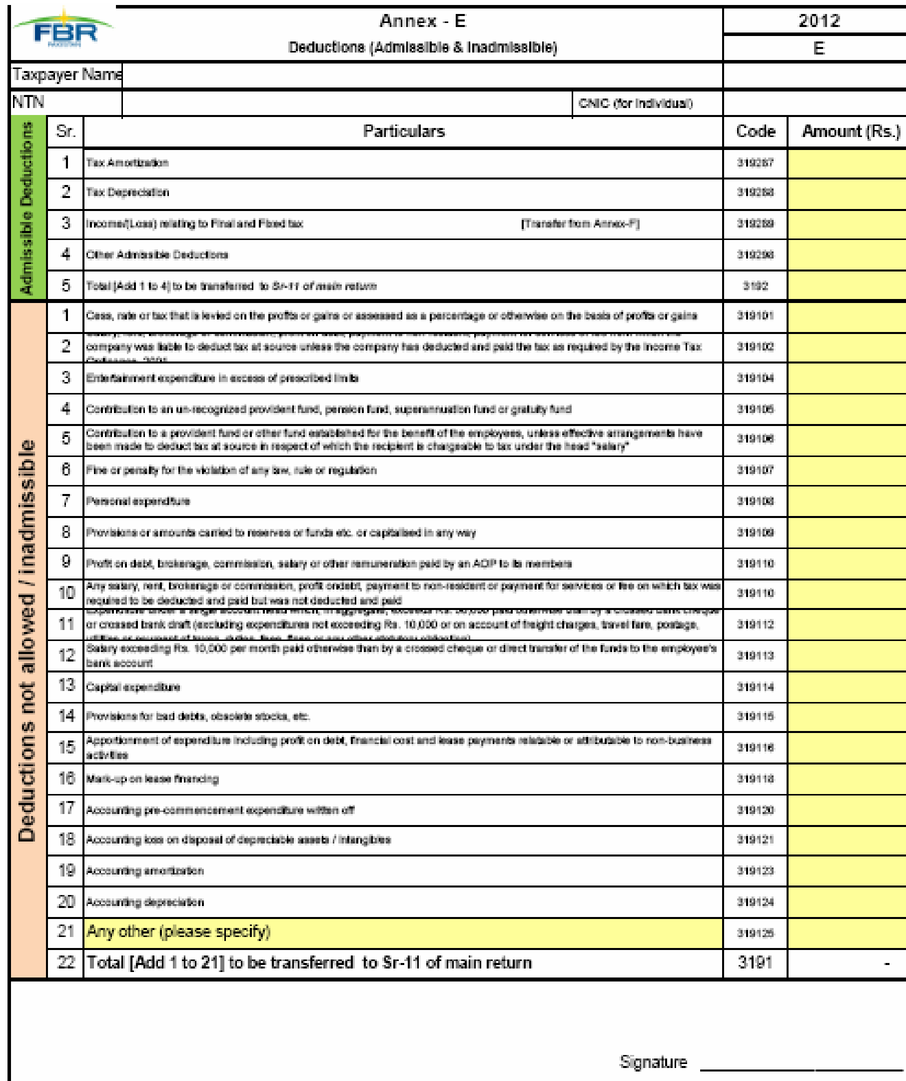
	2012
	D

Taxpayer Name			
NTN		CNIC (for individual)	

PERSONAL EXPENSES

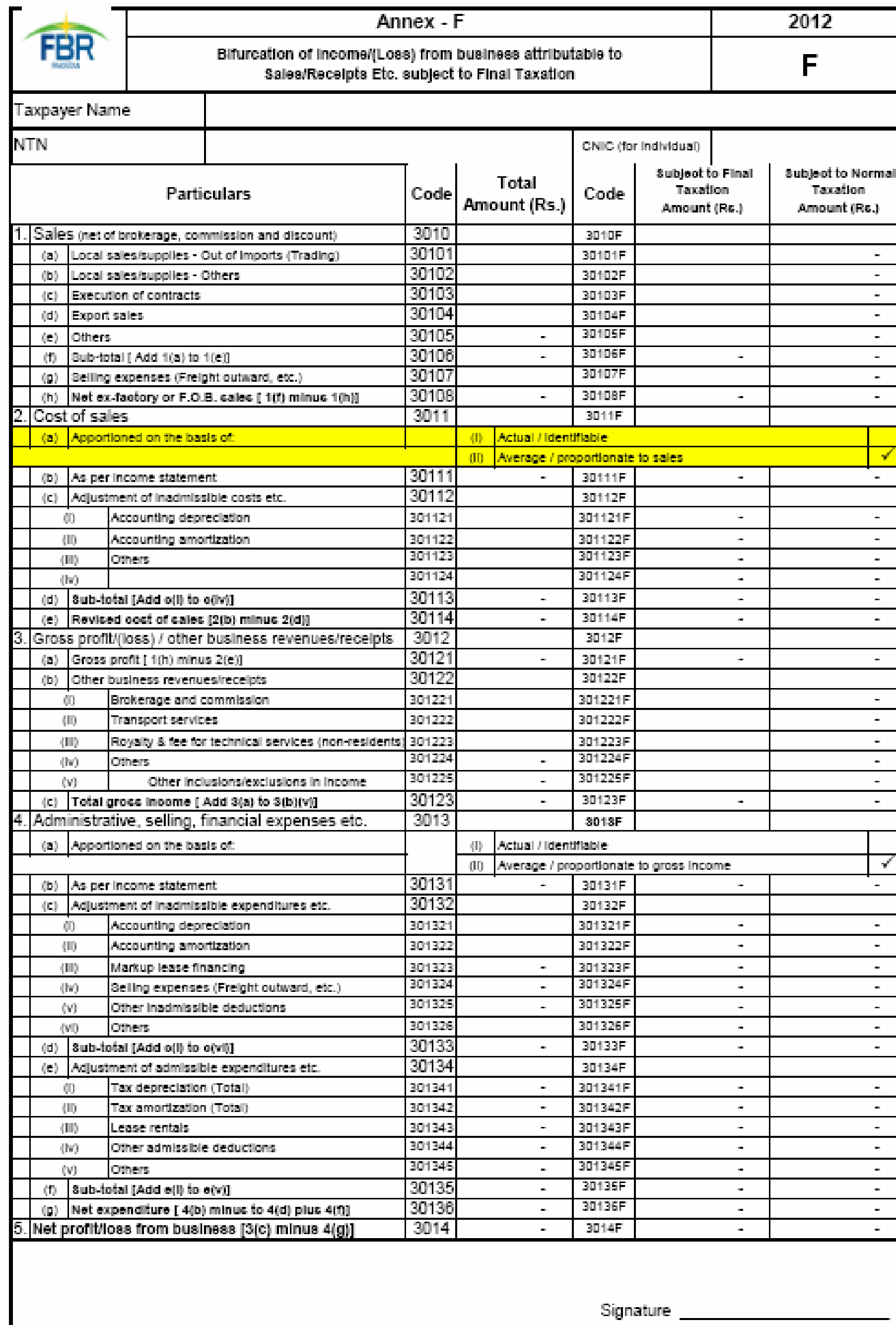
Sr	Description	Expenses	
1	Residence electricity bills		
2	Residence telephone/mobile/internet bills		
3	Residence gas bills		
4	Residence rent/ground rent/property tax/fire insurance/security services/water bills		
5	Education of children/ spouse/ self **(Optional, it can be included in Sr-9)**		
6	Travelling (foreign and local) **(Optional, it can be included in Sr-9)**		
7	Running and maintenance expenses of Motor vehicle(s)		
8	Club membership fees/bills		
9	Other personal and household expenses		
10	Total personal expenses (Sum of 1 to 9)		
11	**(Less) Contribution by family members**		
12	**Net Personal Expenses (10 - 11) transfer to Sr-44 of Main Return**		
		Adults	Minor
13	Number of family members/dependenets	1	3

Signature: ___________________



FBR	Annex - E Deductions (Admissible & Inadmissible)			2012 E
Taxpayer Name				
NTN			CNIC (for Individual)	
	Sr.	**Particulars**	**Code**	**Amount (Rs.)**
Admissible Deductions	1	Tax Amortization	319287	
	2	Tax Depreciation	319288	
	3	Income/(Loss) relating to Final and Fixed tax [Transfer from Annex-F]	319289	
	4	Other Admissible Deductions	319298	
	5	Total [Add 1 to 4] to be transferred to *Sr-11 of main return*	3192	
Deductions not allowed / inadmissible	1	Cess, rate or tax that is levied on the profits or gains or assessed as a percentage or otherwise on the basis of profits or gains	319101	
	2	company was liable to deduct tax at source unless the company has deducted and paid the tax as required by the Income Tax	319102	
	3	Entertainment expenditure in excess of prescribed limits	319104	
	4	Contribution to an un-recognized provident fund, pension fund, superannuation fund or gratuity fund	319105	
	5	Contribution to a provident fund or other fund established for the benefit of the employees, unless effective arrangements have been made to deduct tax at source in respect of which the recipient is chargeable to tax under the head "salary"	319106	
	6	Fine or penalty for the violation of any law, rule or regulation	319107	
	7	Personal expenditure	319108	
	8	Provisions or amounts carried to reserves or funds etc. or capitalised in any way	319109	
	9	Profit on debt, brokerage, commission, salary or other remuneration paid by an AOP to its members	319110	
	10	Any salary, rent, brokerage or commission, profit ondebt, payment to non-resident or payment for services or fee on which tax was required to be deducted and paid but was not deducted and paid	319110	
	11	or crossed bank draft (excluding expenditures not exceeding Rs. 10,000 or on account of freight charges, travel fare, postage,	319112	
	12	Salary exceeding Rs. 10,000 per month paid otherwise than by a crossed cheque or direct transfer of the funds to the employee's bank account	319113	
	13	Capital expenditure	319114	
	14	Provisions for bad debts, obsolete stocks, etc.	319115	
	15	Apportionment of expenditure including profit on debt, financial cost and lease payments relatable or attributable to non-business activities	319116	
	16	Mark-up on lease financing	319118	
	17	Accounting pre-commencement expenditure written off	319120	
	18	Accounting loss on disposal of depreciable assets / intangibles	319121	
	19	Accounting amortization	319123	
	20	Accounting depreciation	319124	
	21	Any other (please specify)	319125	
	22	**Total [Add 1 to 21] to be transferred to Sr-11 of main return**	3191	-

Signature ______________________



FBR

Annex - F | **2012**

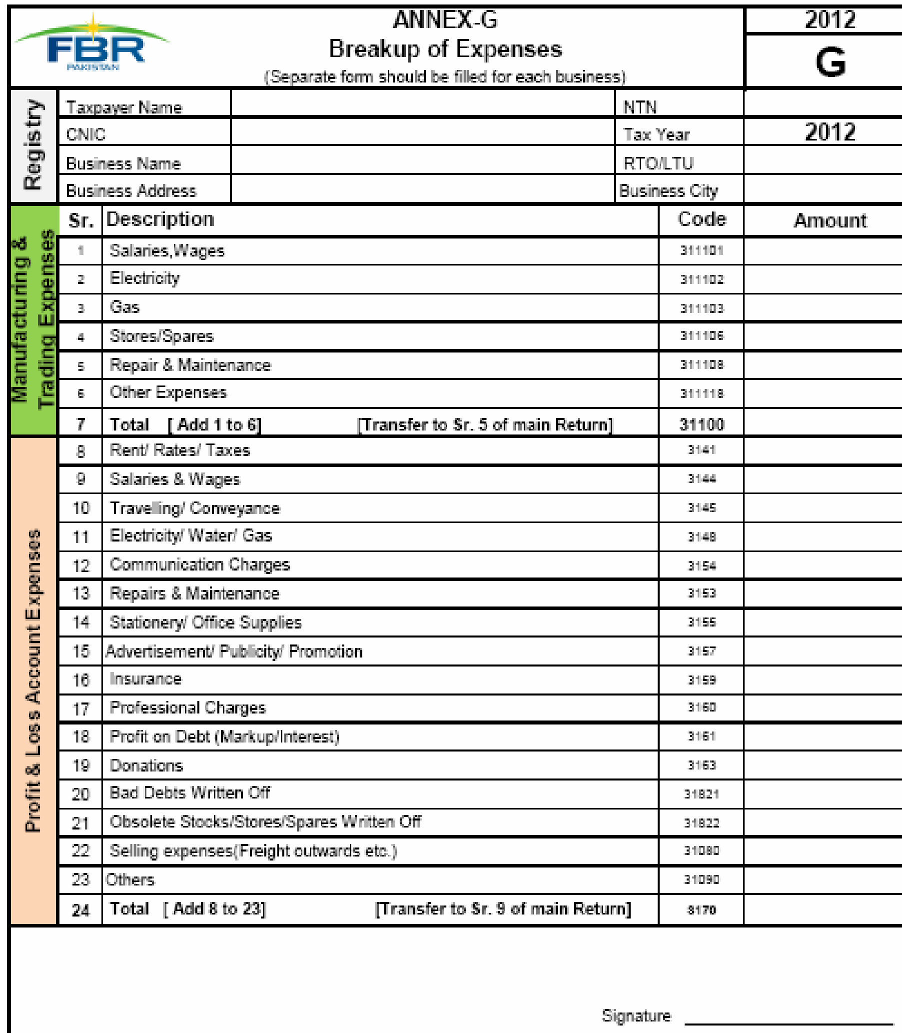
Bifurcation of Income/(Loss) from business attributable to Sales/Receipts Etc. subject to Final Taxation | **F**

Taxpayer Name

NTN | CNIC (for individual)

Particulars	Code	Total Amount (Rs.)	Code	Subject to Final Taxation Amount (Rs.)	Subject to Normal Taxation Amount (Rs.)
1. Sales (net of brokerage, commission and discount)	3010		3010F		
(a) Local sales/supplies - Out of imports (Trading)	30101		30101F		-
(b) Local sales/supplies - Others	30102		30102F		-
(c) Execution of contracts	30103		30103F		-
(d) Export sales	30104		30104F		-
(e) Others	30105	-	30105F		-
(f) Sub-total [Add 1(a) to 1(e)]	30106	-	30106F	-	-
(g) Selling expenses (Freight outward, etc.)	30107		30107F		-
(h) **Net ex-factory or F.O.B. sales [1(f) minus 1(h)]**	30108	-	30108F	-	-
2. Cost of sales	3011		3011F		
(a) Apportioned on the basis of:		(i) Actual / Identifiable			
		(ii) Average / proportionate to sales			✓
(b) As per income statement	30111	-	30111F	-	-
(c) Adjustment of inadmissible costs etc.	30112		30112F		
(i) Accounting depreciation	301121		301121F	-	-
(ii) Accounting amortization	301122		301122F	-	-
(iii) Others	301123		301123F	-	-
(iv)	301124		301124F	-	-
(d) **Sub-total [Add c(i) to c(iv)]**	30113	-	30113F	-	-
(e) **Revised cost of sales [2(b) minus 2(d)]**	30114	-	30114F	-	-
3. Gross profit/(loss) / other business revenues/receipts	3012		3012F		
(a) Gross profit [1(h) minus 2(e)]	30121	-	30121F	-	-
(b) Other business revenues/receipts	30122		30122F		
(i) Brokerage and commission	301221		301221F		-
(ii) Transport services	301222		301222F		-
(iii) Royalty & fee for technical services (non-residents)	301223		301223F		-
(iv) Others	301224	-	301224F		-
(v) Other inclusions/exclusions in income	301225	-	301225F		-
(c) **Total gross income [Add 3(a) to 3(b)(v)]**	30123	-	30123F	-	-
4. Administrative, selling, financial expenses etc.	3013		3013F		
(a) Apportioned on the basis of:		(i) Actual / Identifiable			
		(ii) Average / proportionate to gross income			✓
(b) As per income statement	30131	-	30131F	-	-
(c) Adjustment of inadmissible expenditures etc.	30132		30132F		
(i) Accounting depreciation	301321		301321F	-	-
(ii) Accounting amortization	301322		301322F	-	-
(iii) Markup lease financing	301323	-	301323F	-	-
(iv) Selling expenses (Freight outward, etc.)	301324	-	301324F	-	-
(v) Other inadmissible deductions	301325	-	301325F	-	-
(vi) Others	301326		301326F	-	-
(d) **Sub-total [Add c(i) to c(vi)]**	30133	-	30133F	-	-
(e) Adjustment of admissible expenditures etc.	30134		30134F		
(i) Tax depreciation (Total)	301341	-	301341F	-	-
(ii) Tax amortization (Total)	301342	-	301342F	-	-
(iii) Lease rentals	301343	-	301343F	-	-
(iv) Other admissible deductions	301344	-	301344F	-	-
(v) Others	301345	-	301345F	-	-
(f) **Sub-total [Add e(i) to e(v)]**	30135	-	30135F	-	-
(g) **Net expenditure [4(b) minus to 4(d) plus 4(f)]**	30136	-	30136F	-	-
5. **Net profit/loss from business [3(c) minus 4(g)]**	3014	-	3014F	-	-

Signature ____________________



FBR PAKISTAN	ANNEX-G **Breakup of Expenses** (Separate form should be filled for each business)		2012 **G**

Registry			
Taxpayer Name		NTN	
CNIC		Tax Year	2012
Business Name		RTO/LTU	
Business Address		Business City	

Section	Sr.	Description	Code	Amount
Manufacturing & Trading Expenses	1	Salaries,Wages	311101	
	2	Electricity	311102	
	3	Gas	311103	
	4	Stores/Spares	311106	
	5	Repair & Maintenance	311108	
	6	Other Expenses	311118	
	7	**Total [Add 1 to 6] [Transfer to Sr. 5 of main Return]**	**31100**	
Profit & Loss Account Expenses	8	Rent/ Rates/ Taxes	3141	
	9	Salaries & Wages	3144	
	10	Travelling/ Conveyance	3145	
	11	Electricity/ Water/ Gas	3148	
	12	Communication Charges	3154	
	13	Repairs & Maintenance	3153	
	14	Stationery/ Office Supplies	3155	
	15	Advertisement/ Publicity/ Promotion	3157	
	16	Insurance	3159	
	17	Professional Charges	3160	
	18	Profit on Debt (Markup/Interest)	3161	
	19	Donations	3163	
	20	Bad Debts Written Off	31821	
	21	Obsolete Stocks/Stores/Spares Written Off	31822	
	22	Selling expenses(Freight outwards etc.)	31080	
	23	Others	31090	
	24	**Total [Add 8 to 23] [Transfer to Sr. 9 of main Return]**	**3170**	

Signature ____________________

"Part - II D

WEALTH STATEMENT UNDER SECTION 116 OF THE INCOME TAX ORDINANCE, 2001

WS 1/2

Taxpayer's Name		NTN	
CNIC		Tax Year	2012
Address		RTO/LTU	

Particulars/Description of assets and liabilities *(Please read WS Notes for guidance)*	Code	
1. Business Capital (Indicate name of business)	821311	-

Sr.	Name of Business	Code	Amount (Rs.)
1		82131101	-
2		82131102	-
3		82131103	-
4		82131104	-
5		82131105	-
6		82131106	-
7		82131107	-
8		82131108	-
9		82131109	-
10		82131110	-

2. Non-Agricultural Property (Indicate location, Size/Area & Identification)	711111	-

Sr.	Location and Identification	Code	Amount (Rs.)
1		71111101	-
2		71111102	-
3		71111103	-
4		71111104	-
5		71111105	-
6		71111106	-
7		71111107	-
8		71111108	-
9		71111109	-
10		71111110	-

3. Agricultural Property (Indicate location, Size/Area & Identification	711211	-

Sr.	Location and Identification	Code	Amount (Rs.)
1		71121101	-
2		71121102	-
3		71121103	-
4		71121104	-
5		71121105	-
6		71121106	-
7		71121107	-
8		71121108	-
9		71121109	-
10		71121110	-

4. Agricultural Property (Tractor, Trolley, Loader, Tubewell, Turbine, Sprinkler, Planter, Harvester, Thrasher, Driller & other Agricultural Equipments etc. & Live Stock)	712111	-

Sr.	Property Name	Code	Amount (Rs.)
1		71211101	-
2		71211102	-
3		71211103	-
4		71211104	-
5		71211105	-
6		71211106	-
7		71211107	-
8		71211108	-
9		71211109	-
10		71211110	-

5.	Investments (Specify stocks, shares, debentures, unit certificates, other certificates, deposits and certificates of National Saving Schemes,mortgages, loans, advances, etc.)	712611	-
Sr.	Description of Investments	Code	Amount (Rs.)
1		71261101	-
2		71261102	-
3		71261103	-
4		71261104	-
5		71261105	-
6		71261106	-
7		71261107	-
8		71261108	-
9		71261109	-
10		71261110	-

6.	Loans and Advances, etc.	712641	-
Sr.	Creditor Name	Code	Amount (Rs.)
1		71264101	-
2		71264102	-
3		71264103	-
4		71264104	-
5		71264105	-
6		71264106	-
7		71264107	-
8		71264108	-
9		71264109	-
10		71264110	-

7.	Motor vehicles (Indicate make, model and registration number)				712211	-
Sr.	Registration	Make	Model with Year	Engine Capacity (CC)	Code	Amount (Rs.)
1					71221101	-
2					71221102	-
3					71221103	-
4					71221104	-
5					71221105	-
6					71221106	-
7					71221107	-
8					71221108	-
9					71221109	-
10					71221110	-

8.	Jewellery (Indicate description and weight)	712411	-
Sr.	Description and weight with unit of measure (e.g 10 Tolas)	Code	Amount (Rs.)
1		71241101	-
2		71241102	-
3		71241103	-
4		71241104	-
5		71241105	-
6		71241106	-
7		71241107	-
8		71241108	-
9		71241109	-
10		71241110	-

9.	Furniture and Fittings - Residence	712311	-
Sr.	Description	Code	Amount (Rs.)
1		71231101	-
2		71231102	-
3		71231103	-
4		71231104	-
5		71231105	-
6		71231106	-

		Code	
7		71231107	-
8		71231108	-
9		71231109	-
10		71231110	-

10. Cash & Bank Balances — 7128 — -

(a) Non-business cash in hand — 712811 — -

(b) Non-business bank balances, etc. in current/ deposit/ savings accounts — 712711 — -

Sr.	Account No	Country	Bank Name	City Name	Br. Code	Branch Name	Code	Amount (Rs.)
1							71271101	-
2							71271102	-
3							71271103	-
4							71271104	-
5							71271105	-
6							71271106	-
7							71271107	-
8							71271108	-
9							71271109	-
10							71271110	-

11. Any Other Assets — 7126 — -

Sr.	Description	Code	Amount (Rs.)
1		71267101	-
2		71267102	
3		71267103	-
4		71267104	-
5		71267105	-
6		71267106	-
7		71267107	-
8		71267108	-
9		71267109	-
10		71267110	-

12. Assets, if any, standing in the name of spouse, minor children & other dependents* — 713111 — -

Sr.	Description	Code	Amount (Rs.)
1		71311101	-
2		71311102	-
3		71311103	-
4		71311104	-
5		71311105	-
6		71311106	-
7		71311107	-
8		71311108	-
9		71311109	-
10		71311110	-

13. Total Assets [Sum(1 to 12)] — 719999 — -

14. Liabilities (including mortgages, loans, overdrafts, advances, borrowings, amounts due under hire purchase agreement) — 8213 — -

Sr.	Business Name	Code	Amount (Rs.)
1		72111101	-
2		72111102	-
3		72111103	-
4		72111104	-
5		72111105	-
6		72111106	-
7		72111107	-
8		72111108	-
9		72111109	-

10		72111110	-

		Code	Amount
15.	Total Liabilities [sum(14(a) to 14(b)]	729999	-
16.	Net Wealth of the current year [13 minus 15]	799999	-
17.	Annual personal expenses (To be Reconciled with Annex D)	749999	-
18.	Number of family members and dependents	740000	Minors
19.	Assets, if any, transferred to any person	714111	-

Sr.	Description	Code	Amount (Rs.)
1		71411101	-
2		71411102	-
3		71411103	-
4		71411104	-
5		71411105	-
6		71411106	-
7		71411107	-
8		71411108	-
9		71411109	-
10		71411110	-

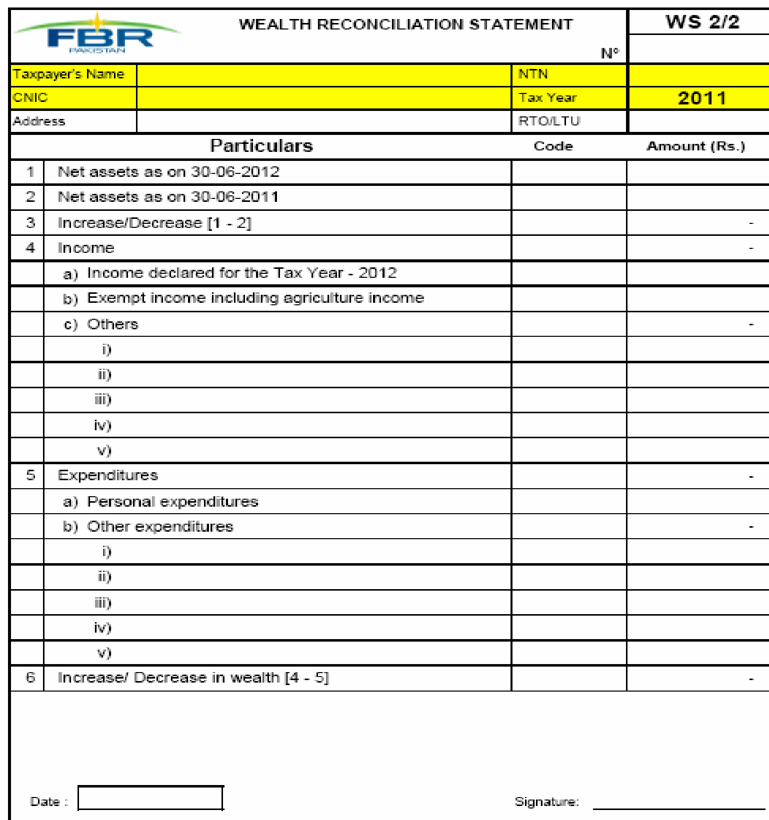
Verification

I, ______________________________, holder of CNIC No. ______________ in my capacity as Self / Representative* of Taxpayer named above, do hereby solemnly declare that to the best of my knowledge the assets and liabilities of myself, my spouse or spouses, minor children and other dependents as on ______________ and of my personal expenditure for the year ended ______________ are correct and complete in accordance with the provisions of the Income Tax Ordinance, 2001 and Income Tax Rules, 2002.

(The alternative in the verification, which is not applicable, should be scored out.)

* As defined in section 172 of the Income Tax Ordinance, 2001

Date (dd/mm/yyyy): ______________ Signature ______________



WEALTH RECONCILIATION STATEMENT — **WS 2/2**

N°

Taxpayer's Name		NTN	
CNIC		Tax Year	**2011**
Address		RTO/LTU	

	Particulars	Code	Amount (Rs.)
1	Net assets as on 30-06-2012		
2	Net assets as on 30-06-2011		
3	Increase/Decrease [1 - 2]		-
4	Income		-
	a) Income declared for the Tax Year - 2012		
	b) Exempt income including agriculture income		
	c) Others		-
	i)		
	ii)		
	iii)		
	iv)		
	v)		
5	Expenditures		-
	a) Personal expenditures		
	b) Other expenditures		-
	i)		
	ii)		
	iii)		
	iv)		
	v)		
6	Increase/ Decrease in wealth [4 - 5]		-

Date : ______________ Signature: ______________

RETAILER'S STATEMENT U/S 115 (4)
OF THE INCOME TAX ORDINANCE, 2001
(For retailers (Individuals) having annual turnover upto 5 million rupees
but not having any other taxable source of income)

FBR

IT-4
(English)

REGISTRATION

1	CNIC	Tax Year	2012
2	NTN (if available)	Gender	Male / Female
3	Business Name		
4	Business Address		
	Province	District	
5	Principal Activity		
6	Phone No.	Electricity No.	
7	Mobile No.	Gas Ref. No.	

COMPUTATION

	Description	Amount
8	Opening Stock	
9	Net Sales during the year	
10	Closing Stock	
11	Turnover Tax payable u/s 113A @ 1 % of turnover (1% of Sr-11)	
12	Turnover Tax Paid	
13	CPR No.	CPR Date

Income from Other Sources

14	Agriculture Income	
15	Foreign Remittance (along with proof)	
16	Dividend income	
17	Profit on debt	

PESONAL EXPENSES

	Description	Expenses
18	Residence electricity bills	
19	Residence telephone/mobile/internet bills	
20	Residence gas bills	
21	Residence rent/ground rent/property tax/fire insurance/security services/water bills	
22	Education of children/ spouse/ self **(Optional, it can be included in Sr-26)**	
23	Travelling (foreign and local) **(Optional, it can be included in Sr-24)**	
24	Running and maintenance expenses of Motor vehicle(s)	
25	Club membership fees/bills	
26	Other personal and household expenses	
27	**Total personal expenses (Sum of 18 to 26)**	
28	(Less) Contribution by family members	
29	Net Personal Expenses (27 - 28)	
30	Number of family members/dependenets	Adults / Minors

VERIFICATION

I, ______________________ holder of CNIC No. ____________
in my capacity as Self/ Representative (as defined in section 172 of the Income Tax Ordinance, 2001) of Taxpayer named above, do solemnly declare that to the best of my knowledge and belief the information given in this Statement is correct and complete in accordance with the provisions of the Income Tax Ordinance, 2001 and Income Tax Rules, 2002 (The alternative in the verification, which is not applicable, should be scored out).

Date : ____________ **Signature**

ACKNOWLEDGEMEN

Signature & Stamp
of Receiving Officer with Date

Note-1 : Retailers having turnover of more than Rs. 5 million should file IT-2 Return instead of this Statement
Note-2 : Retailers having any other source of income should file IT-2 Return instead of this Statement "

3. This notification shall be applicable for the Tax Year 2012.

2012 PTR 1229 (Trib. Ind.)

AUTHORITY FOR ADVANCE RULINGS (INCOME TAX) NEW DELHI

P.K. Balasubramanyan, Chairman

FACTS/HELD

1. **A subsidiary created for Indian business is a PE of the foreign parent**
2. The applicant, a Singapore company, entered into an agreement with an Indian group subsidiary company for the performance of shipment transport services within & outside India. The agreement was on a principal to principal basis. The applicant claimed that as it had no office, equipment, employee or agent in India and did not carry out operations in India, it did not have a PE in India and no part of the receipts from outbound and inbound consignments was taxable in India. HELD by the AAR:
   (i) A "permanent establishment" is something which enables a non-resident to carry on a part of its whole business in a particular country. **The Aramex group could not have done business in India without a presence in India**. This presence in India can be achieved through an independent entity or through a subsidiary. If the entity is an independent & uncontrolled entity, then there is no PE if the requirements in Article 5(2) of the DTAC are not satisfied. However, **if a 100% subsidiary is created for the purpose of attending to the business of the group, the subsidiary must be taken to be a PE of the group in India applying common sense**.
   (ii) As the subsidiary has a **fixed place of business** in India and the business of the applicant is carried on through it, the definition in Article 5(1) is satisfied. The subsidiary is also a PE under Article 5(8) because it **habitually secures orders** in India wholly for the Aramex group and **concludes contracts** for the group. The exception in Article 5(10) that the fact that a subsidiary carries on business shall not of itself constitute that company a PE

of the foreign company does not apply because **it is not a case of the subsidiary carrying on "its business" in India but it is a case of the entire group carrying on business in India through the subsidiary**. Also, the fact that the agreement refers to the subsidiary as "independent" and "non-exclusive" is not relevant because it is a **mere camouflage** to screen the fact that the subsidiary is really a PE of the applicant's group in India.

Order accordingly.

A.A.R. No. 1061 of 2011.

Decided on: 7th June, 2012.

Present at hearing: P.J. Pardiwala, Sr. Advocate, Ravi Praksh, Abhinav Ashwin, Advocates and Karina Haum, for Applicant. Shishir Srivastava, Addl.DIT(IT), for Department.

JUDGMENT

P.K. Balasubramanyan:– (Chairman)

The applicant is a company incorporated in Singapore in the year 2009. It is a tax resident of Singapore. It is a part of Aramex group of companies.

2. Aramex International Limited incorporated in Burmeda has a fully owned subsidiary in India named Aramex India Pvt. Ltd. (AIPL). Aramex International Burmeda had a business arrangement with the Indian subsidiary and the transactions between those parties were subject matters of assessment under the Income-tax Act. After formation of the Singapore entity, the applicant, the operations in India are looked after by the applicant. The applicant entered into an agreement dated 1.4.2010 with AIPL for carrying on the business arrangement originally conducted through Aramex International, Bermuda.

3. The Aramex group is in the business of door-to-door express shipments by air and land and performing related transport services. It has expertise, experience and personnel and technical information and know-how required for the business. As per the business arrangement and now under the agreement between the applicant and AIPL, AIPL has to look after the movement of packages within India both outbound and in-bound. The applicant has entered into the agreement for the movement of packages within and outside India. According to the applicant, in terms of the agreement the applicant is responsible for transportation of packages throughout the world outside India and AIPL is responsible for transportation of packages in India. In the application, the applicant has classified broadly the international express business of AIPL in the following manner:

Outbound consignments

In respect of outbound consignments, AIPL picks up the consignments from the respective consignors in India and gets them delivered to a destination outside India. On such consignments reaching the overseas destination, the applicant arranges to get them cleared and delivers them to the ultimate consignee.

Inbound consignments

In respect of inbound consignments, the applicant picks up consignments from the consignors in various foreign countries, whether by itself or through affiliates, and tenders them either to international airlines or on board couriers for transportation. On such consignments reaching India, AIPL acting as an independent contractor, takes necessary steps for delivery to the consignee.

4. According to the applicant, it has appointed AIPL as a non-exclusive service provider with respect to the international express business into India and from India and similarly AIPL has appointed the applicant as a non-exclusive service provider with respect to such business as per the agreement dated 1.4.2010. The key features of the agreement are that the applicant appointed APIL as a non-exclusive service provider and APIL undertakes the international express business of the applicant. The applicant has to assist AIPL in the delivery of the packages outside India. Correspondingly, AIPL has to assist the applicant in the delivery of the packages in India. The contract is entered into by the parties on principal to principal basis. The applicant conducts its international express business of its own account outside India and AIPL conducts its international business of its own account in India. AIPL is entitled to use specific transport and logistical service providers outside the Aramex group upon a request by the customer. AIPL can at its own discretion and expense open offices in India. Neither the applicant nor AIPL is liable to each other for negligence, mis-representation or otherwise for loss of profits or revenues in business, anticipated savings so on. AIPL is not otherwise to act on behalf of the applicant. AIPL cannot legally bind the applicant. AIPL is not authorized to make any agreement, warranty, covenant or other representation, nor to create any obligation on behalf of the applicant. Likewise, the applicant is not authorized to act for and on behalf of AIPL other than within the scope of the agreement. The applicant charges fees to AIPL in connection with invoicing and payment functions performed by it. The applicant wants to know whether on account of the activities conducted outside India in connection with the international express business and the fees paid to the applicant by AIPL in connection with the invoicing and payment functions, the payments are chargeable to tax in India. It may be noted that the questions asked are only in respect of the activities

conducted outside India by the applicant and the payment received by the applicant from AIPL for carrying out the obligations outside India.

5. After hearing both sides this Authority allowed the application under section 245R(2) of the Act to give a ruling on the following questions:

1. *On the facts and circumstances of the case, amongst others, where the applicant has no office, equipment, employee or agent in India and no operations are carried out by the applicant in India, whether there exists (i) a permanent establishment (PE) of the applicant in India in connection with the international express business under the "agreement between the Government of Singapore and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income. ('the India-Singapore tax treaty)" or (ii) any other basis to attribute or allocate income taxable in India to the applicant?*
2. *In the case the answer to question (1) is in the affirmative, whether the receipts by the applicant from outbound and inbound consignments are attributable to the PE of the applicant in India?*
3. *Without prejudice to the answers to questions (1) and (2), if the transactions between the applicant and Aramex India Limited (AIPL) are on the arm"s length basis, whether any income can still be attributed to a PE of the applicant in India?*
4. *In case it is held that the applicant has no PE in India, whether the fees received by the applicant for support functions of invoicing and payment performed by the applicant are in the nature of 'fees for technical services" under the India-Singapore tax treaty?*
5. *Based on the answers to question (1) to (4) above, would the receipts by the applicant from AIPL be subject to withholding tax under section 195 of the Income-tax Act, 1961 ('the Act')?*

6. While making that order, this Authority also reserved for consideration the question whether the transaction is designed for avoidance of tax in India, while considering the application under section 245R(4) of the Act.

7. According to the Revenue, the agreement put forward by the applicant is a mere camouflage and the questions now raised are really involved in the assessment proceedings which are already pending. Mere inclusion of some services in the agreement dated 1.4.2010 cannot hide the real picture. Aramex group is defined in the agreement as meaning, Aramex PJSC, a public joint stock company duly incorporated and in existence under the laws of United Arab Emirates (UAE). The business of

the group is door-to-door delivery of express shipments by air and land and related transport services. India is one of the countries where such business is carried on by the Aramex group. The Indian side of the business is carried on through the Indian subsidiary AIPL. The income earned by the applicant through AIPL is the income from the business in India. As regards inbound activities, the group delivers the articles gathered world wide to the destination from where it is cleared by AIPL and delivered to the addressees in various parts of India. As regards the outbound articles, AIPL collects the packages or consignments from various parties and delivers them at a destination for further transportation by the group entities for delivery to the addressees abroad. AIPL is in reality the permanent establishment of the Aramex group in India. All profits arising from the business in India through AIPL must be taxed in India on that basis. The structure adopted by the Aramex group is with the deliberate intention of trying to avoid payment of legitimate tax due on the income earned by the group from its business in India and such attempt at avoidance, should not be countenanced. The applicant has created the Singapore entity just to seek the benefit of the Singapore-India Double Taxation Avoidance Convention. This Authority ought to rule that a part of the income earned by the applicant from the activities referred to in the application, viz. outbound activities, is liable to be taxed in India.

8. I may straight away say that in terms of the agreement dated 1.4.2010, the application before this Authority has been filed before any return of income relating to the relevant assessment year had been filed before the income-tax authorities and the objection that the question is already pending before the income-tax authorities cannot be accepted. It may be true that the transaction(s) prior to 1.4.2010 were on the same or even identical lines with the Aramex entity in Bermuda. But then, in view of the fact that a fresh transaction has come into existence and the Ruling is sought based on it, clause (i) of the second proviso to section 245R(2) of the Act cannot be said to be attracted. I overrule that contention on behalf of the Revenue sought to be raised at the hearing. Similarly, the order under section 195 of the Act made on 31.5.2011 also cannot stand in the way of a ruling being given in the present application as has been consistently held by this Authority.

9. Learned Senior counsel for the applicant contended that AIPL was doing business on its own and also does domestic business in India, AIPL gets income from such domestic business. For that business, the network of Aramex is not used. There were separate agreements covering the payment of 'royalty' and payment of 'fees for technical services' for using the same system. Those aspects are not involved in this case. The dispute here is only regarding the amount payable to the applicant by AIPL on the basis of the agreement dated 1.4.2010. It can be seen that the income of AIPL from the business covered by the agreement dated 1.4.2010 is

only about one-third of the total income of AIPL. The transaction in question is between independent entities and AIPL is not the exclusive agent of the applicant confined to the business of the network. The income from the business was 'business income' within the meaning of Article 7 of the India-Singapore DTAC and under paragraph 1 thereto, it was not chargeable to tax in India, unless the applicant has a permanent establishment in India. The applicant has no PE in India since it has no fixed place of business in India. It has also no agent in India within Article 5(2) of DTAC. Neither clause (8) nor clause (9) of Article 5(2) is attracted. AIPL was incorporated in the year 1966 and it was in business from then onwards. For the purpose of this application, this Authority has to proceed on the basis that what is paid by AIPL to the applicant is arms-length price. On that assumption, if the applicant has no permanent establishment in India, there is no question of taxing the income in question in India. If there was a PE, then of course, transfer pricing has to be verified. What is paid by AIPL to the applicant is also not 'fees for technical services'.

10. On behalf of the Revenue, it is submitted that the basis of the order made under section 195 (2) of the Act was sound, that there was no commercial reason established for creating a Singapore entity, the applicant, and for entering into the agreement dated 1.4.2010. Aramex group has business all over the world and the income from India to it must be held to be taxable in India. AIPL is not even free to engage any other service provider for rendering services to customers for delivery of articles outside the country and could do so only if the Aramex group has no representative in that particular country. This provision in the agreement clearly showed that there was no independent existence for AIPL. The whole scheme adopted is an attempt to avoid payment of legitimate taxes due on the income arising from India.

11. AIPL is a 100% subsidiary of Aramex International Bermuda. Aramex group has admittedly business in various countries all over the world including India. Its business in India is conducted by it through AIPL. No doubt, AIPL has been formed as a subsidiary and has an identity under the Companies Act, 1956. The fact remains that the business is that of Aramex group and the reputation and appealability is that of the Aramex group.

12. When actually taking up the work in India, Aramex group enters into agreements with customers for the purpose of acceptance of articles and for their deliveries at various destinations around the world. It has to arrange, for picking up the articles from the customers collecting them at a convenient place for transportation to various destinations around the world. This is the position regarding the outbound services undertaken by Aramex group. As far as 'inward business' is concerned, Aramex group companies in various parts of the world contact the customers, take delivery of the articles to be delivered to various cities and towns in India

and deliver them at a chosen destination. The business is completed by delivery of the consignments to the concerned addressees in India. For that, the Aramex group has created a subsidiary, in India, AIPL. Without the association of AIPL, the business of Aramex group as regards the articles sent to India, cannot be performed. It is the case of the applicant that the goods are brought to a common destination and delivered to AIPL and AIPL ensures that the articles are delivered to the concerned parties in various parts of India.

13. Aramex group thus cannot successfully conduct its business of transporting and delivering articles from and in India without AIPL performing its role in India. Does AIPL became a permanent establishment of the applicant because of this, is the question.

14. What is a permanent establishment? Is it not something which enables a non-resident company to carry on a part of its whole business in a particular country? Without this entity AIPL, Aramex group cannot complete its business or fulfill its obligations to its clients or customers around the world. The Aramex group could have done this through any entity in India by entering into the necessary agreement in that behalf. But then if that entity engaged, is an entity which has no business connection with the Aramex group or which is not a part of the Aramex group, then the question will be whether that entity is constituted an agent exclusively for the business of Aramex or almost exclusively for the business of Aramex. But when that business is got done, not through such an agent, but through a subsidiary created, a wholly owned subsidiary at that, is it not possible, to postulate that the subsidiary entity would be a permanent establishment of the group‟? Common sense says, that it would be. After all, a permanent establishment is defined to be a permanent place of business. Which is the permanent establishment of Aramex group in India in this case? It is clearly the location of its subsidiary in India.

15. When a business cannot be carried on exclusively in so far as it relates to customers in India like in the present case, without intervention of another entity, a subsidiary, normally that entity must be deemed to be the establishment of the group in that particular country. The position may be different when the entity is an independent entity uncontrolled by the group unless it satisfies the other requirements mentioned in Article 5(2) of the DTAC. But in a case where a 100% subsidiary is created for the purpose of attending to the business of the group in a particular country, here, in India, I am of the view that the Indian subsidiary must be taken to be a permanent establishment of the group in India. It is not pretended that the without its part being played by the Indian entity, AIPL, the business of the applicant could be successfully transacted. Thus, AIPL is an essential part of the business of the group now routed through the applicant in India. No doubt, AIPL may have an independent existence as a subsidiary. Clearly, the

authority over it of the principal, vertical or persuasive, cannot be in doubt. I am, therefore, satisfied that in a case like the present, the subsidiary must be considered to be a permanent establishment of the group in the concerned country, here, India.

16. The question has to be examined whether under Article 5 of the DTAC between India and Singapore, the subsidiary in India, AIPL, would be considered to be a permanent establishment of the applicant in India. Paragraph 1 of Article 5 provides that for the purpose of the DTAC, the term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried out. Clearly, AIPL has a fixed place of business and branches. The business of the applicant Aramex group in India is only carried on by AIPL. APIL obtains orders, collects articles, transports them to a specified destination so as to be taken over by the group and then delivered to the addressees in various countries through its entities in those countries. Therefore, it would not be incorrect to say that AIPL is a permanent establishment of Aramex group in India.

17. Paragraph 10 of Article 5 of the DTAC says that the fact that a company which is a resident of a contracting State controls or is controlled by a company which is a resident of the other contracting State or which carries on business in that other contracting State, shall not of itself constitute either company a permanent establishment of the other. In other words, the fact that the applicant, on behalf of the Aramex group, controls AIPL or that AIPL carries on its business in India, shall not of itself constitute AIPL a permanent establishment of the applicant. When the whole business in India of a multi-national company is carried on within the geographical contours of India, by a subsidiary like AIPL in this case, can it be said that it is only a case of AIPL carrying on its business in India? It is really a case of a group carrying on its business in India or that part of the business relatable to India through a fully owned subsidiary involving all its business activities. Does it not take the subsidiary, out of the confines of paragraph 10 of Article 5? Merely entering into an agreement describing the subsidiary controlled legally or persuasively by the principal as an independent entity or a non-exclusive agent, would not bring the case of a subsidiary like AIPL within the ambit of paragraph 10 to Article 5 of the DTAC. I find considerable force in the argument on behalf of the Revenue that the agreement put forward by the applicant relating to its business with AIPL is a mere camouflage to screen the fact that AIPL is really a permanent establishment of the applicant's group in India. I am, therefore, of the view that AIPL should be considered as a permanent establishment of the applicant, on the facts and in the circumstances of the case.

18. Paragraph 8 of Article 5 of the DTAC provides that where an agent of an independent status to whom paragraph 9 does not apply, is acting in a Contracting State on behalf of an enterprise of the other

contracting state, that enterprise shall be deemed to have a permanent establishment, notwithstanding paragraphs 1 and 2 of Article 5, if it habitually exercise in that state an authority to conclude contracts on behalf of the enterprise or habitually secures orders in the first mentioned stage wholly or almost wholly for the enterprise itself or for the enterprise under the same common control. Here, AIPL secures orders in India wholly for the Aramex group. It also has the right to conclude and concludes contracts for the group for its Express shipment business. On facts it appears to me that AIPL has to be deemed to be a permanent establishment of Aramex group and the applicant in India. It is not a case of AIPL undertaking purchase of goods or merchandise to take it out of the deeming provision in paragraph 8.

19. In a Ruling in *AAR No.542 of 2001*, (274 ITR 501) in a similar situation, this Authority ruled that an independent agent of an American principal would be a permanent establishment of the American company in terms of paragraph 1 of Article 5 of the DTAC between India and USA. I am in respectful agreement with the reasoning and conclusion on this question. The following passage in paragraph 7 of the OECD commentary on Article 5, "For a place of business to constitute a permanent establishment, the enterprise using it must carry on its business wholly or partly through it" and the following passage in paragraph 41 that "*However, a subsidiary company will constitute a permanent establishment for its parent company under the same conditions stipulated in paragraph 5 as are valid for any other unrelated company, i.e. if it cannot be regarded as an independent agent in the meaning of paragraph 6, and if it has and habitually exercises an authority to conclude contracts in the name of the parent company. And the effects would be the same as for any other unrelated company to which paragraph 5 applies*" and the statement in paragraph 42 "*The same rules should apply to activities which one subsidiary carrys on for any other subsidiary of the same company*" also indicate that AIPL would emerge as a permanent establishment of the applicant in India. Here, the applicant gets done its entire business related to India through AIPL.

20. Thus, I find that AIPL is a Permanent Establishment of the applicant in India within the meaning of Article 5 of the DTAC between India and Singapore.

21. In the light of the above finding, on question no.1, I rule that there exists a permanent establishment of the applicant in India in connection with its international express business under the DTAC between India and Singapore. On question no.2, I rule that the receipts by the applicant from outbound and inbound consignments attributable to the permanent establishment in India is taxable in India. On question no. 3 I rule that the question whether the transaction between the applicant and AIPL as per agreement dated 1.4.2010 is on arms-length basis has to be verified to determine whether any income can still be

attributed to the permanent establishment in India. In view of my rulings on question no. 1 to 3, I decline to rule on question no. 4 formulated. On question no. 5 I rule that the receipts by the applicant from AIPL would be subject to withholding tax under Section 195 of the Income-tax Act.

2012 PTR 1238 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
DELHI "H" BENCH, DELHI

I.P. Bansal, Judicial Member and A.N. Pahuja, Accountant Member

FACTS/HELD

1. **Section 40(a)(ia) amendment by Finance Act 2010 is retrospective**
2. For AY 2008-09, the assessee made a deposit of TDS after the due date for payment but before the due date for filing the ROI. The assessee claimed that the amendment to s. 40(a)(ia) by the FA 2010 w.e.f. 1.4.2010, which allows time for deposit of TDS upto the due date of the ROI, should be treated as being retrospective w.e.f. 1.4.2005. The AO rejected the plea though the CIT (A) allowed it. Before the Tribunal, the department relied on Bharati Shipyard 132 ITD 53 (Mum)(SB) where it was held that the amendment was not retrospective. HELD by the Tribunal dismissing the appeal:

    Though in Bharati Shipyard 132 ITD 53 (Mum)(SB), it was held that the amendment to s. 40(a)(ia) by the FA 2010 w.e.f. 1.4.2010 cannot be treated to be retrospective, a contrary view has been taken by the Calcutta High Court in CIT vs. Virgin Creations. As this is the sole High Court judgement on the point, it has to be followed in preference to the view of the Special Bench. Accordingly, the amendment to s. 40(a)(ia) by the FA 2010 is applicable retrospectively from 1.4.2005 and no disallowance u/s 40(a)(ia) can be made if the TDS is paid on or before the due date for filing the ROI (Piyush C. Mehta (Mum) & M.K. Gurumurthy (Bang) followed)

Appeal dismissed.

ITA No. 3592/Del/2011 Assessment year : 2008-09.

Heard on: 22nd May, 2012.

Decided on: 22nd May, 2012.

Present at hearing: Dr. B.R.R. Kumar, DR, for Appellant. S. Srinivasan, AR, for Respondent.

JUDGMENT

A.N. Pahuja:– (Accountant Member)

This appeal filed on 20.07.2011 by the Revenue against an order dated 16.05.2011 of the ld. CIT(A)-XIX, New Delhi, raises the following grounds:–

1. *"Whether on the facts and in the circumstances of the case the provisions of section 40(a)(ia) of the Income-tax Act as amended by the Finance Act, 2010, with effect from 01.04.2010 should be treated as retrospectives w.e.f. 01.04.2005.*
2. *The appellant craves for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of appeal. "*

2. Facts, in brief, as per relevant orders are that return declaring income of Rs. 12,75,862/- on a/c of short term capital gains and nil business income filed on 30.09.2008 by the assessee, after being processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act), was taken up for scrutiny with the service of a notice u/s 143(2) of the Act issued on 15.09.2009. During the course of assessment proceedings, the Assessing Officer (A.O. in short) noticed that the assessee deposited TDS of Rs. 1,59,332/- deducted from an amount of Rs. 16,22,846/- beyond the stipulated time. To a query by the AO, seeking to disallow the aforesaid amount in terms of provisions of sec. 40a(ia) of the Act, the assessee pleaded that proviso to section 40(a)(ia) of the Act inserted by Finance Act,2010 was applicable retrospectively w.e.f. 1.4.2005 and the assessee having deposited TDS before the due date of filing the return, no disallowance could be made. However, the AO did not accept the submissions of the assessee and disallowed the amount of Rs. 16,22,846/- in terms of extant provisions of section 40(a)(ia) of the Act.

3. On appeal, the ld. CIT(A), following the decision of ITAT Ahmedabad Bench in the case of *Kanubhai Ramjibhai Makwana vs. Income Tax Officer* (2011) 9 Taxmann.com 55, holding the proviso to sec.40a(ia) of the Act inserted by Finance Act 2010 applicable retrospectively w.e.f 1.4.2005, allowed the claim, the assessee having deposited TDS on 11.4.2008.

4. The Revenue is now in appeal before us against the aforesaid findings of the ld. CIT(A). At the outset, both the parties agreed that issue is squarely covered by the decision dated 23rd November, 2011 of

the Hon'ble Calcutta High Court in I.T.A. no.302 of 2011 in *CIT vs. Virgin Creations*, followed subsequently by co-ordinate Bench in their decision dated 11.4.2012 in *Piyush C. Mehta vs. ACIT* no.1321/Mum./2009 for the AY 2005-06 and the decision dated 10.5.2012 in ITA no. 717/Bang/2011for the AY 2008-09 in *ACIT vs. M.K. Gurumurthy*.

5. We have heard both the parties and gone through the facts of the case. Indisputably, the assessee deposited TDS deducted from an amount of Rs. 16,22,846/- on 11.4.2008 i.e. before the due date of filing of return. The issue before us in this case is as to whether amendment made to the provisions of section 40a(ia) of the Act by the Finance Act, 2010, would apply with retrospective effect from 1.4.2005 or w.e.f 1.4.2010. We find that various coordinate Benches of the ITAT in their decision dated 16.12.2010 in Kulwant Singh vs. ITO in ITA no.2191/Ahd./2008 for the AY 2005-06, decision dated 22.9.2010 is in the case of *Bansal Parivahan (India) P Ltd. vs. ITO* in ITA no.2355/Mum/2010 for the AY 2006-07and the decision dated 3.12.2010 in the case of Shri Kanubhai Ramjibhai Makwana in ITA no.3983/Ahd./2008 for the AY 2005-06 held that the said amendment would operate retrospectively w.e.f 1.4.2005.Subsequently, Special Bench in *Bharati Shipyard Ltd. vs. DCIT* , 13 taxmann.com 101 (Mum) (SB) vide their order dated 9.9.2011 held that the aforesaid amendment carried out by the Finance Act,2010 was applicable prospectively. Later, Hon'ble Calcutta High Court in their decision dated 23.11.2011 ITA no. 302 of 2011 GA 3200/2011 in *CIT vs. Virgin Creations*, held that that amendment to the provisions of Sec.40(a)(ia) of the Act, by the Finance Act, 2010 as aforesaid was retrospective from 1.4.2005. The ld. AR pointed out that this is the sole decision rendered by a High Court at the moment on the issue. Following the view in this decision, co-ordinate Bench in their decision dated 11.4.2012 in *Piyush C. Mehta vs. ACIT* no.1321/Mum./2009 for the AY 2005-06 and the decision dated 10.5.2012 in ITA no. 717/Bang/2011for the AY 2008-09 in *ACIT vs. M.K. Gurumurthy* also held that the aforesaid amendment is applicable retrospectively w.e.f 1.4.2005.

5.1 In view of the foregoing, following the view taken in the aforesaid decision of the Hon'ble Calcutta High Court in *Virgin Creations* (supra), we are of the opinion that the amendment to the provisions of Sec.40(a)(ia) of the Act, by the Finance Act, 2010 is applicable retrospectively from 1.4.2005. Consequently, any payment of tax deducted at source on or before the due date for filing return of income u/s.139(1) of the Act, can not be disallowed in terms of provisions of sec.40a(ia) of the Act. Indisputably, in the instant case the assessee deposited the tax deducted at source on11.4.2008 i.e. before the due date for filing return of income u/s.139(1) of the Act . In this situation, especially when the Revenue have not brought to our notice any contrary decision, we are not inclined to interfere with the findings of the ld. CIT(A).I n view thereof, ground no.1 in the appeal is dismissed.

6. No additional ground having been raised before us in terms of residuary ground no.2 in the appeal, accordingly, this ground is dismissed.

7. No other plea or argument was made before us.

8. In result, appeal is dismissed.