Daily Tax News (DTN)

Huzaima & Ikram
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This issue contains:

Kind regards

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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.

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*

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

[1] The word "T" is superfluous.

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 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: ☐

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.
