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*vs.*

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*vs.*

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Kind regards

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## **Finance (Amendment) Ordinance, 2012** **Controversial and questionable**

by  
*Huzaima Bukhari & Dr. Ikramul Haq*

Opposition Leader, Chaudhry Nisar Ali Khan, while strongly criticizing the Finance (Amendment) Ordinance, 2012, promulgated by the President just a day before the session of National Assembly, observed that it was “opening of doors for money laundering and legalization of black money”. Talking to reporters outside Parliament House on 4 May 2012, Chaudhry Nisar termed the Presidential Ordinance as the worst example of money laundering. He said that it would allow legalization of undisclosed income and assets earned through illegal means. Under the Finance (Amendment) Ordinance, 2012, tax department is barred from questioning the source of investment made in stock exchanges. Mr. Nisar alleged: “The Ordinance has been specially promulgated to facilitate President Zardari and his cronies, who want to legalize their black money by investing in stock exchanges”. He vowed that after coming into power, PML-N would hold an inquiry into the promulgation of this Ordinance, adding that this law would darken future of the stock markets.

Advocates of the move, including the Securities and Exchange Commission of Pakistan, say it is justified as money from outside the formal, documented sector will be invested in the stock market, providing a boost to the market. The tax authorities will get tax on short-term gains and ultimate goal of increasing documentation of the economy would be achieved.

Many independent and cautious analysts are of the view that the move can be welcomed, distasteful as it may be for law-abiding, taxpaying citizens, as it will encourage money from the ‘informal’ or undocumented economy to enter the formal economy. Others are of the opinion that the Finance (Amendment) Ordinance, 2012 is unlikely to help promote the fundamental purpose of funds for new industrial activity. They are critical that instead of having the SECP and the FBR publicly list the benefits that would accrue to the state and society, the government chose to move through a Presidential Ordinance on the eve of a parliamentary session—even good ideas need to be fully transparent.

It all started when Finance Minister, Hafeez Shaikh, during his visit to Karachi Stock Exchange on January 21, 2012, “approved the Securities and Exchange Commission of Pakistan (SECP) proposal on revamping Capital Gains Tax (CGT)”. It included among other clauses allowing investors to inject money without declaring the source of income till June 30, 2014. This was blatant violation of Anti-Money Laundering Act, 2010 as well as our international obligations to enforce anti-money laundering measures in all spheres of economic areas—Pakistan is signatory to

United Nation Convention Transnational Organised Crime, Article 7 of which covers money laundering.

In the wake of “promise” by Finance Minister to “stock market players”, bitter controversy erupted in Press—many articles appeared favouring and criticizing the proposed move. It is undeniable fact that once illegal money enters financial markets, it becomes harder to trace its origins. Under the law promulgated by President Zardari any money invested for 120 days in listed shares on its withdrawal would stand laundered. The ill-gotten gains can be multiplied till 30 June 2014—an unprecedented move that has perpetual cycle of promoting tax evasion and money laundering.

Mr. Abid Shaban, a leading and experienced tax adviser, while very aptly analyzing the move noted, “What such immunity can do is to make Pakistan the worlds' biggest money laundering country”. He is absolutely right. Suppose if a person having Rs. 500 million untaxed money invests the same in stocks and after 120 days gets back investment with huge profit, he would not be charged for money laundering as protection has been provided by the State. If he wants to avoid tax, he will keep money invested for one year. The second important question raised by Mr. Shaban is “why this favour is only meant for stock exchanges where no significant number of IPOs floated during the last few years. Why not this kind of amnesty for industrial sector or construction industry where elasticity of labour is about 0.7% (second highest after agriculture)—at least this will create employment in the country”.

The problem of tax evasion and black money in Pakistan has always been a serious challenge to the State. Successive governments, rather than cracking down on tax cheats, have been appeasing them through various amnesty schemes, but none succeeded in achieving the objective of bringing black money in tax net. All such schemes failed miserably and black economy continued to grow rather than showing any signs of decline.

Top tax managers in FBR failed to tap untaxed resources because of frequent amnesty schemes. The recurrent appearance of such schemes and money whitening instruments/modes show that the State has conceded failure of its tax machinery in enforcing tax laws. Resultantly, the nation has become addicted to easy money and such schemes/instruments have become a routine matter for them. The people being hooked on ill-gotten wealth/income for the last many years know for sure that after every two or three years, there would be an amnesty scheme giving them a chance to get their income/assets whitened by paying far less the amount than what they are required to pay under the normal income tax regime. It is a tragic situation where the entire State apparatus is subservient to those who blatantly manage to hide their income and wealth.

All tax reform efforts since 2003 have gone to waste because of policies of appeasement towards tax evaders. Moves like the Finance (Amendment)

Ordinance, 2012 favour looters and evaders and also bring more hardships for the poor people—the incidence of tax increases on them while rich accumulate more wealth through immunities and amnesties. Corrupt people in power get more money and protect underground economy as it is the main source of rent-seeking for them.

Pakistan will never progress if policies of appeasement towards plunderers of the national wealth and tax evaders continue unabated. The foundations of corruption and rent-seeking have to be destroyed with full force if democracy and rule of law to stay in Pakistan—they cannot co-exist. With laws like Finance (Amendment) Ordinance, 2012 tax-to-GDP ratio will never improve. The only way to become a self-reliant economy is to crack down on the underground economy, collect taxes from the rich and mighty and adopt austerity and transparency in governance. Unless it is done ordinary citizens will keep on suffering.

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**FBR starts recovery through freezing of bank accounts**

The Federal Board of Revenue (FBR) has initiated harsh measures for recovery of outstanding liabilities by freezing bank accounts of taxpayers / entities, official sources said on Tuesday.

The Large Taxpayers Unit (LTU) Karachi had recovered significant amount, especially in litigation cases where stay was granted by courts and lingered on for more than six months, they said.

“The unit recovered Rs1.5 billion so far and more recovery is expected before June 30, 2012,” an official at the LTU Karachi said on the condition of anonymity.

The recovery included attachment of bank accounts of an oil and exploration company, which was in litigation and the stay granted by the court exceeded six months, the official added.

The unit late last month issued notices for the recovery of outstanding liabilities in litigation cases where stays were granted, but linger on for more than six months.

The LTU Karachi, the biggest revenue collection arm of the Federal Board of Revenue (FBR) has estimated around Rs40 billion stuck up in litigation and those were stuck because stay orders were not vacated for years.

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

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

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

“As a matter of fact, in view of the above constitutional provision, no extension at all can be granted by any court. Since the interim order ceases to have effect on expiration of a period of six months from the date of passing of the order, the authorities concerned are well within their right to seek enforcement of the judgment / order, against which any such interim order is passed after the expiry of the aforesaid period of six months,” the statement added.

Official sources said that besides recovery in litigation cases, the LTU Karachi has also initiated recovery where demand had been created, but taxpayers defaulted.

“The unit has selected cases for recovery by freezing the bank accounts of respective taxpayers,” a source in the LTU Karachi said.

The source said that the FBR usually apply such tactics by end of every fiscal year to boost the revenue collection. The FBR is eyeing Rs1,952 billion revenue collection target for the current fiscal year. It has provisionally collected Rs1,424 billion up to April and still needs Rs528 billion in the last two months. – *Courtesy The News*

### **KWSB takes notice of non-payment of bills**

Taking serious notice of default in water bills payment by the residents of multi-storeyed flat buildings, the Karachi Water and Sewerage Board (KWSB) has warned that water supply and sewerage services would only be ensured to the residential flat complexes of the city from where billing recoveries would be at least 75 per cent.

According to a press statement issued on Tuesday, MD KWSB Misbhauddin Farid directed the officials of Revenue and Engineering departments to conduct a survey of multi-storeyed buildings, apartments and flat projects in different parts of the city in order to ascertain the ratio of billing recoveries from there.

He said the water supply and sewerage services to high-rise buildings and apartment complexes would be regularized and rationalized in accordance with the bill payment ratio. “The bill recoveries from high-rise buildings are vital for financially strengthening the cash-strapped water utility of the city, which in turn owes billions of rupees to Karachi Electric Supply Company due to accumulating dues of power bills of the Water Board.”

The MD KWSB warned that water supply and sewerage connections of the flat complexes having low payment ratio could

be severed. In this connection, the Water Board's officials concerned had been directed to meet the representative associations of residential complexes in order to convince the residents to make timely payment of bills by considering it as their solemn civic duty. Farid expressed concern that residents of various residential projects in Gulshan-e-Iqbal, Gulistan-e-Jauhar, Jamshed Town, Scheme-33, Garden East and West had been evasive in making timely payment of their water bills. – *Courtesy The News*

### **ST levy on basis of printed retail price: FBR decides to add new items to Third Schedule**

The Federal Board of Revenue has decided to considerably expand the scope of the Third Schedule of the Sales Tax Act 1990 in budget (2012-13) by encompassing a lot of new consumer items for imposition of sales tax on the basis of printed retail price.

Sources told here on Tuesday that the FBR would retain the Third Schedule of the Sales Tax Act 1990 in coming budget under which manufacturers are paying sales tax at all the stages of the value addition of consumer items with printed retail price.

It has been agreed to add new items in the said Schedule so that sales tax be charged on the basis of retail price from 2012-13.

Presently, items chargeable to sales tax at the retail stage included fruits and vegetable juices, ice cream, aerated waters or beverages, syrups and squashes, cigarettes, toilet soap, detergents, shampoo, toothpaste, shaving cream, perfumery and cosmetics, tea, powder drink, milky drink, toilet paper and tissue paper, spices sold in retail packing bearing brand names and trade marks and shoe polish and shoe cream.

At present, the FBR is reviewing the list of the consumer items on which sales tax collection is not up to the mark and charging of sales tax on the basis of printed retail price would improve collection from more items sold in the open market.

Sources said that the manufacturers have to pay sales tax at all the stages of value addition of consumer items with printed retail price.

Under the Value Added Tax (VAT) regime, the tax is to be paid on value addition attributed at each stage, starting from manufacturing down to retail sale to the end consumer.

A number of dealers, distributors and wholesalers of different consumer items are still out of tax net despite efforts to bring the intermediate linkages in supply chain in the taxation system and resultantly the tax actually chargeable at each stage on value addition is not being recovered, sources observed.

Sources said that the FBR may continue with the Third Schedule of the Sales Tax Act with the argument that the Third Schedule needs to be carried on due to special circumstances prevailing in Pakistan. – *Courtesy Business Recorder*

### **Pall of secrecy shrouds new SRB chairman's selection**

A pall of secrecy shrouds the selection of new Chairman of Sindh Board of Revenue (SRB) in place of present incumbent who is due to retire on completion of his two year tenure on July 1.

Insiders say that political considerations appear to be dominating the covert exercise now being conducted to bring in "the favourite" to head the Sindh revenue collection body, merit, notwithstanding.

The absence of Dr Kaiser Bengali, Chairman of the selection committee (who is also Chairman of the task force on tax on services in Sindh), from the meeting of the committee held here on May 4 to select suitable candidate from amongst the six short listed candidates, is a clear indication in that direction.

It is believed the Chairman abstained suspecting political interference in the appointment process.

Much to the discomfiture of the candidates, interviews were conducted without the presence of Chairman of the Committee which was constituted by Sindh government and also includes besides the Chairman, Chief Secretary, Finance Secretary and Law Secretary.

A total of 62 applications were received for the coveted position, out of which six candidates were short listed for final selection, which also needs to be revisited because of the absence of Chairman of the selection committee during the interviews.

SRB was constituted after a long struggle and resistance from Federal Board of Revenue.

In the NFC award it was clearly mentioned that any province which likes to collect sales tax on services may do so if it so desired.

The actual position, however, is that even or otherwise tax on services falls in the domain of provinces as per constitutional provision.

After the announcement of NFC award, the notification issued by the President did not contain the provision of expressed para with regard to collection of taxes on services by provinces if they wished to do so.

However, Sindh Government had to chase the issue for an appropriate notification containing the para of collection of tax on services by provinces, which was later notified and issued.

According to inside information, FBR and Ministry of Finance continued creating difficulties for Sindh Government to give effect to the smooth functioning of SRB.

For this Sindh government had to shuttle between Karachi and Islamabad to initiate the functioning of SRB for online based collection of tax on services to start with from some categories, yet to be expanded to cover all categories given in the schedule of services.

The adjustment of tax on services and restriction on categories of services for collection of tax by Sindh province continued to be hurdles in the desired freehand working of SRB.

Sindh is the only province which has exercised its constitutional right, further re-confirmed by the notification relevant to the NFC award.

Sindh is the biggest holder of services in GDP, which account for 53 percent of the GDP.

There are 98 services and if SRB could manage its independence supported by political will of politicians in Sindh, it could quadruplicate present collection target of Rs 25 billion for year 2011-12 in coming year.

The surge in tax on services in Sindh would be distinguished in number if construction services, services provided or rendered by property developers and promoters are brought into the tax net of services.

SRB up till now from July to April has been able to collect more than Rs 18 billion and is expecting a transfer of Rs 1.5 billion which was collected by FBR during the early period when Sindh government was struggling for transfer of rights to collect the tax

on services as per constitutional provisions strengthened by expressed notification after NFC award by President of Pakistan.

It is also being widely said that construction companies and developers constitute the biggest slice of revenue collection by Sindh government through collection of tax on services as per law.

However, construction companies and developers are resisting tooth and nail avoiding registration with SRB.

They continue to call this business poor man's benefit sales business and up till now SRB has not been able to bring them into the tax net.

One of the persons engaged with tax consultancy talking to *Business Recorder* in settlement of the query to know the reasons of resistance towards the registration with SRB by construction companies and developers, said that construction and land developing economic activities are undervalued right from the sale and purchase of land to developed projects for sale.

That is the reason that they would not like to get registered and offer them for documentations as when the individuals will be involved in sales and purchase, the undocumented portion will be exposed inviting increase in liability of direct taxes on construction companies and developing activities.

One cannot file different returns with different departments; this is the main concern of construction companies and developers.

In Karachi alone in Defence area construction and developing activities are undertaken by individuals and small groups for profit who make sales without disclosure of the actual business involved in between buyer and seller.

Once the sales and purchase of properties becomes subject of sales tax involvement, it will create a burden of liability of also attracting to tax on income for federal government, commented another person conversant with this business.

Present SRB Chairman has been chasing construction companies and developers to pay their due taxes which they are avoiding.

It appears that the solution to dilute his pressure is to install and help in sneaking of somebody to take over SRB so that the organisation is tuned to the desires of big groups with possibility of getting exemption in the schedules by making misuse of the law.

The categories of services which are avoiding coming into the tax net of services would include:

Services provided or rendered by architects, town planners, contractors, property developers or promoters, interior decorators, architects or town planners, contractors of building (including water supply, gas supply and sanitary works), roads and bridges, electrical and mechanical works (including air conditioning), horticultural works, multi-discipline works (including turn-key projects) and similar other works, property developers or promoters and landscape designers, other construction services: services provided or rendered by property developers and promoters.

It would be interesting to note that against actual collection of Rs 17.289 billion on GST on services from Sindh (reported in CBR Year Book), the Government of Sindh received only Rs 5.942 billion during the period from 2000-01 to 2007-08 indicating a short release of Rs 11.347 billion to Sindh.

On the contrary after coming into being of SRB in Sindh, province is targeting Rs 25 billion collection of tax on services for year 2011-2012.

Already SRB has collected more than Rs 18 billion since July 2011 and is expecting to add Rs 1.5 billion from FBR which was collecting tax on services in the early months of 2011.

Pakistan is the only federation where provinces generate less than six percent of national tax revenue.

In India provincial own resources are more than 30 percent of their total revenue.

There can be no provincial autonomy in Pakistan without fiscal autonomy and provinces should be strong through implementation of tax on services in order to meet the demand of home-grown policies and required projects in the provinces to reduce poverty.

The conflict between merit and the personal interest in organisation like SRB is most unfortunate in ongoing selection of SRB Chairman, who would be heading an organisation with future potential of over Rs 100 billion collection, if more categories of services are brought into tax net during coming few years.

SRB needs to be strengthened to have better capacity with HR based on recruitment through prism of merit.

All the posts need to be advertised in terms of the criteria and selections have to be on merit in order to arrest this organisation from being classified as corrupt organisation.

In case present moves succeed to install the chairman not on merit but on personal and political considerations, the future of the organisation is not promising.

Chief Minister of Sindh should take special guards in avoiding SRB from becoming another SRB and KBCA which are talked at large for being corrupt and no files moves without cost compliances, influences and other ingredients of non merited supports.

One analyst said that Chairman of the selection committee Dr Kaiser Bengali should make due interventions and play his role in not only ensuring a right person to take over SRB but as well as being Chairman of the task force on tax on services, he should recommend Government of Sindh to initiate screening of the recruitment made up till now so that the SRB could not only become a model organisation but as well as ensure the tax collections which would provide a space for province to have better allocations for annual developments to improve the living conditions of major population.

The inability of collecting tax on construction services by FBR should come to an end as potential of tax on services only in construction services could be calculated on the basis of share of construction as 2.5 percent of GDP.

In rupee terms this will be about Rs 250 billion, with 40 percent contribution by Sindh the value of Rs 100 billion will alone generate Rs 16 billion as tax on construction services in Sindh province.

The share of Sindh in total services is estimated as 40 percent, the amount in rupee term of services produce will be Rs 4,000 billion.

Considering half of the construction services as undocumented and concealed in Sindh alone, the tax on documented economy in Sindh would still be in the proximity of Rs 300 billion at the present rate of 16 percent.

Sindh could prosper if SRB is strengthened and HR of FBR is screened and filtered through merit and future appointments like of a Chairman SRB is put to the litmus test of non disputed selection. – *Courtesy Business Recorder*

**Provisional figures: Rs 1.427 trillion collected during July-April**

Without any downward revision in the revenue collection target of Rs 1,952 billion for 2011-12, the Federal Board of Revenue has provisionally collected Rs 1427 billion during July-April (2011-12) excluding Rs 19 billion of sales tax on services collected by the Sindh Revenue Board (SRB).

Sources told here on Tuesday that the revenue collection target for 2010-2011 was repeatedly revised in the past.

The budgetary target of Rs 1667 billion was downward revised to Rs 1604 billion during 2010-11.

The revised target of Rs 1604 billion was further scaled down to Rs 1588 billion in 2010-11.

The net revenue collection of the FBR stood at Rs 1550 billion for 2010-11 against thrice revised target of Rs 1588 billion.

On the other hand, the FBR has not even revised downward revenue collection target of Rs 1952 billion set in budget 2011-12.

The tax machinery is making day and night efforts to cross the psychological barrier of Rs 1952 billion by the end of current fiscal.

Even the revenue projections for current fiscal have not been revised once.

If Rs 19 billion collected by the SRB is incorporated in the provisional collection of Rs 1427 billion during July-April (2011-12), the FBR collection will reach Rs 1446 billion.

However, the FBR's provisional revenue collection of Rs 1427 billion has not included sales tax collected on services by the SRB.

At the time of fixation of budgetary target of Rs 1952 billion for 2011-12, the collection from services sector was part of the tax projections for the fiscal.

Now, the FBR is not including the SRB collection in its revenue as reflected from Rs 1427 billion collected during July-April (2011-12).

The latest data itself speaks of the efforts made by the FBR to reach the figure of Rs 1952 billion during current fiscal without slashing the said budgetary tax projections.

The FBR has to collect Rs 525 billion in the remaining period of current fiscal.

Despite a massive revenue loss of over and above Rs 25 billion due to law and order situation in Karachi in March 2012, the FBR has managed to maintain growth of over 25 percent during ongoing fiscal.

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*

### **Confusion about WHT reporting system removed**

Directorate General of Withholding Taxes Federal Board of Revenue is a separate directorate of the FBR, which is not legally required to report to the FBR Member Enforcement and Withholding.

Sources told here on Tuesday that Director General of Withholding Taxes FBR is headed by a Grade-21 senior official whereas the FBR Member Enforcement and Withholding is also a Grade-21 official.

How a Grade-21 official would be legally bound to report to another officer in the same grade? There is also no confusion in reporting system of withholding taxes by the Regional Tax Offices (RTOs) to the concerned authorities on a monthly basis.

The Large Taxpayer Units and RTOs are primarily responsible to collect the withholding tax at the levels of the field formations.

The LTUs and RTOs generate monthly progress reports (MPRs) on the withholding taxes and regularly dispatch them to all the concerned members of the FBR.

Thus, there is no confusion about the reporting of the withholding taxes by the RTOs.

The Directorate General of Withholding Taxes is mainly responsible for monitoring and recovery of withholding taxes and it is working in an organised and co-ordinated manner with the RTOs.

Under the MPR system, the reports are generated and timely sent to the FBR as well as to the directorate by the RTOs.

The Directorate General of Withholding Taxes also gives guidance to the RTOs on withholding related issues and clarifications whenever and wherever required.

This helps the field formations in proper guidance to the concerned officers in the field formations for recovery of withholding taxes.

Keeping in view the existing reporting system under the MPRs, there is no interference of individuals for reporting purposes.

All monthly reports are automatically communicated to concerned officials without creating any confusion.

As far as the issue of reporting to the FBR Member Enforcement and Withholding is concerned, Directorate General of Withholding Taxes is not bound to report to the said FBR Member, sources added. – *Courtesy Business Recorder*

### **Plan for maximising WHT deductions, deposits**

The Federal Board of Revenue (FBR) is going to take Pakistan Banking Council (PBC) on board for developing Standard Operating Procedures (SOPs) to ensure timely deduction and deposit of withholding taxes by financial institutions, tax officials said on Tuesday.

As meeting between FBR officials and PBC will be held in the next week in Islamabad.

Speaking at a meeting with regional commissioners (I, II and III) of FBR's Inland Revenue Sardar Aminullah Khan, Member Enforcement and Withholding Taxes (WHT) and Raza Baqar, Member Administration.

Chief commissioners of Large Taxpayers Units (LTU) of Karachi, Hyderabad, Sukkur and Quetta also attended the meeting.

They emphasised on the need for going beyond the call of duty to achieve Rs 1952 billion target and directed to strictly monitor withholding taxes' detection/recovery, besides being vigilant against illegal input adjustment till June 30 this year.

They also decided to constitute special audit teams to monitor WHT and conduct withholding audit of large organisations to detect illegal claims of input adjustments.

The move was part of a concerted effort to maximise revenue collection in the last quarter of the fiscal year.

Sections 153 (payment against contracts), 151 (profit on debt), 150 (dividends), 231A (cash withdrawal from banks) and 152 payments to non-residents were also discussed. – *Courtesy Business Recorder*

### **Budget likely to be presented on June 1**

The Ministry of Finance has reportedly moved a summary to Prime Minister Secretariat seeking permission to announce annual budget for the upcoming financial year 2012-13 on June 1 against the earlier date of May 25, it has been learnt from sources. Official sources told TheNation on Tuesday that PPP-led coalition government is likely to present budget on June 1, as Finance Ministry believes that it would complete all work in this regard well one time. Meanwhile, sources further said that crucial meetings of National Accounts Committee (NAC) and Annual Plan Coordination Committee (APCC) are likely to be held on Wednesday and Thursday respectively. The NAC would recalculate GDP growth target that was mistakenly calculated, which delayed the announcement of annual budget for one week. The APCC would finalise developmental budget worth of over Rs 825 billion for the financial year to come 2012-13. Sources said that share of federal government in Public Sector Development Programme (PSDP) would be around Rs 350 to Rs 370 billion and provincial governments share would be around Rs 450 to Rs 475 billion. Online adds: Federal government is all set to reduce the size of next federal development budget by Rs 50 billion as the Finance Ministry has directed the Planning Commission to reduce the volume due to financial crunch. According to sources, the federal government is struggling to settle disputes with provinces before the meeting of APCC so that it will be able to avoid any awful situation in the meeting because due to election year provinces were expected to raise many questions over the fate of next development budget. According to sources, the Planning Commission has proposed to delete smaller projects from the next Public Sector Development Programme (PSDP) in order to meet gap between meager resources and yawning expenditures. “This would change the decades old pattern of the PSDP formulations and developmental allocations,” the sources added. However, sources told that the government of Punjab was somewhat in favour of the proposal while rest of the three smaller provinces namely Sindh, Balochistan, and Khyber Pakhtoonkhwa were staunch opponent to this proposal and now federal government

was striving hard to convince provinces ahead of meeting but not yet succeeded in this regard. All three provinces are sharing this argument that the striking down smaller projects would mean depriving them of majority of projects. "Most of projects including basic infrastructure in smaller provinces especially in Balochistan would fall under the so-called category of small projects," the sources added. "We want to change next fiscal year's 2012-13 PSDP in an attempt to ignore all small projects costing less than Rs.100 million and only want to carry out costly and important projects," added the official. – *Courtesy The Nation*

2012 PTR 966 (S.C. Ind.)

SUPREME COURT OF INDIA

**The Chief Justice,  
A.K. Patnaik and Swatanter Kumar, JJ.**

*Addl. Commr. of I.T*

v.

*Tulip Star Hotels Ltd.*

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**FACTS/HELD**

1. **Section 36(1)(iii): S. A. Builders 288 ITR 1 (SC) to be reconsidered**
2. The assessee *borrowed funds and used it to subscribe to the equity capital of its subsidiary company*. The subsidiary company used the said funds for the purpose of acquiring the Centaur Hotel, Juhu Beach, Mumbai. The assessee paid interest on the borrowed money and claimed that a deduction u/s 36(1)(iii). The AO rejected the claim though the CIT (A), Tribunal & High Court (338 ITR 482) allowed it by relying on S. A. Builders Ltd vs. CIT 288 ITR 1 (SC). It was held that as the *assessee, being a holding company had a deep interest in its subsidiary, and hence if the holding company advanced borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would be entitled to deduction of interest on its borrowed loans*. On appeal by the department, HELD by the Supreme Court:

Issue notice on the applications for condonation of delay as also on the special leave petitions. In our view, S.A. Builders Ltd. vs. Commissioner of Income-Tax (Appeals) and Another, reported in 288 ITR 1, needs reconsideration.

*Petition remanded back.*

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**Petition(s) for Special Leave to Appeal (Civil)...../2012 (CC 7138-7140/2012).****Heard on: 30<sup>th</sup> April, 2012.****Decided on: 30<sup>th</sup> April, 2012.**

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**Present at hearing: Gaurab Banerji, ASG., T.M. Singh, A. Subhashini and Anil Katiyar, Advocates, for Petitioner. Mahesh Agarwal, Rishi Agrawala, E.C. Agrawala, Nakul Mohta and Swati Sinha, Advocates, for Respondent.**

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*(From the judgement and order dated 18/08/2011 in ITA No.43/2009, ITA No.505/2010 and ITA No.562/2010 of The HIGH COURT OF DELHI AT N. DELHI)*

### **JUDGMENT**

Upon hearing counsel the Court made the following Order.

Issue notice on the applications for condonation of delay as also on the special leave petitions. Mr. Mahesh Agarwal, learned counsel, appears for the respondent.

In our view, *S.A. Builders Ltd. vs. Commissioner of Income-Tax (Appeals) and Another*, reported in 288 ITR 1, needs reconsideration.

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**2012 PTR 967 (H.C. Del.)**

### **HIGH COURT OF NEW DELHI**

**A.K. Sikri and M.L. Mehta, JJ.**

*Commissioner of Income-tax*

*v.*

*Tulip Star Hotels Ltd*

*Appeals accordingly dismissed.*

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**IT Appeal Nos. 43 of 2009 and 505 & 562 of 2010.**

**Decided on: 18<sup>th</sup> August, 2011.**

**Present at hearing: Sanjeev Sabharwal and Suruchi Aggarwal, for Appellant. O.S. Bajpai, V.N. Jha, Manswani, for Respondent.**

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### **JUDGMENT**

*A.K. Sikri, J.-*

1. The respondent-assessee had borrowed certain funds which were utilized by the assessee to subscribe to the equity capital of the subsidiary company, namely, M/s. Tulip Star Hospitality Services Ltd. This subsidiary company used the said funds for the purpose of acquiring the Centaur Hotel, Juhu Beach, Mumbai, which is now functioning as "The Tulip Star , Mumbai". The assessee paid interest on the borrowed money. This interest liability incurred by the assessee was claimed by it as deduction on the ground that it was business expenditure. The Assessing Officer (AO) refused to allow this expenditure.

However, the Commissioner of Income-tax (Appeals) reversed the decision of the Assessing Officer and the opinion of the Commissioner of Tax Review

Income-tax (Appeals) has been confirmed by the Income-tax Appellate Tribunal (ITAT) by the impugned orders which relate to different assessment years. Challenging the said orders, these appeals are preferred.

2. A perusal of the orders passed by the Tribunal would reveal that it is noted by the Income-tax Appellate Tribunal that the assessee is in the business of owning, running and managing hotels. For the effective control of new hotels acquired by the assessee under its management it had invested in a wholly owned subsidiary, namely, M/s. Tulip Star Hospitality Services Ltd. On this ground, relying upon the judgment of the Supreme Court in the case of *S. A. Builders Ltd. v. CIT (Appeals)* [2007] 288 ITR 1 the Tribunal has held that the assessee was entitled to the deduction of interest on the borrowed funds. The observations made by the Supreme Court in *S. A. Builders Ltd's case (supra)* were quoted by the Tribunal as under (page 10):

“ . . . where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans.”

3. In these circumstances holding it to be expenditure incurred for business the same was allowed under section 36(1)( iii ) of the Income-tax Act by the Tribunal. The Tribunal has also held that this expenditure would be allowed even under section 57(iii) of the Act. Though there may be some controversy as to whether the aforesaid expenditure is allowable under section 57( iii ) of the Act or not, we have no doubt, in our mind, that the expenditure incurred under the aforesaid circumstances would be treated as expenditure incurred for business purposes and was thus allowable under section 36 of the Act. Mr. O. S. Bajpai, learned senior advocate appearing for the assessee, has produced a copy of the memorandum of association of the assessee which, inter alia, specifies the following objects:

“To own, purchase, construct, acquire, equip, operate, manage, conduct or in any other manner and in all its aspects deal in hotels, motels, resorts, inns, guest houses, apartments, food courts, shopping plazas, commercial complexes, casinos, entertainment parks, water parks, amusement centres, gaming centres, bowling alleys, wild life parks, restaurants, cafes, refreshment rooms, lodging houses of every kind and sort including all the conveniences, amenities and facilities adjunct thereto, in India or in any other part of the world and to act as consultants, advisors, experts, technical collaborators, valuers, surveyors, inventory analysts in all matters, pertaining to

(Foreign) *Commissioner of Income Tax vs. Tulip Star Hotels Ltd.* **CL. 969**

setting up of hotels, resorts, all form of lodging, touristic and leisure projects.”

4. We are, thus, of the opinion that no question of law arises. These appeals are accordingly dismissed.

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