Daily Tax News (DTN)

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

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This issue contains:

Kind regards

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Budget to focus jobs, uplift: Shaikh

Finance Minister Dr. Hafeez Sheikh has said that the important targets in the next financial budget would be to create new opportunity of employment and achieve the economic development.

Addressing a pre-budget seminar in Karachi on Sunday, he said that equal taxation per centage would be enforced.

He said during the last two years Rs800 billion have been given to the provinces for the completion of the developmental projects.

The Finance Minister said that GDP remained at three point seven per cent during the current financial year. He said that there would be no additional tax in the next budget but significant cut in income tax and sales tax to provide relief to the lower income group people.

He said, we would follow fiscal responsibilities. The Government would increase taxes through widening tax net. It gives central place to the private sector which is the engine for economic growth and job creation in the country. He assured the business community that their ideas and suggestions would be dully taken care of while finalizing the budget and making other economic policies.

He said the food security for the common man was a serious challenge for the Government which was making the best use of the available resources and was taking long term measures to manage the situation in future.

Prominent among the participants were Acting President FPCCI Shaikh Shakil Ahmed Dhingra, Vice Chairman, Consideration of South Asian Chambers of Commerce and Industry, and former president FPCCI Tariq Sayeed, Federal Secretary Finance Wajid Ahmed Rana, the Chairman Federal Board of Revenue (FBR). – *Courtesy The Financial Daily*

Import of secondary quality ETP: ECC approves duty reduction despite FBR opposition

The Economic Co-ordination Committee (ECC) of the Cabinet has approved reduction of customs duty on import of secondary quality Electrolytic Tin Plate (ETP) from 15 percent to 10 percent despite Federal Board of Revenue (FBR) opposition to the proposal, it is learnt.

Ministry of Commerce in a summary to the ECC requested reduction of custom duty on import of secondary quality Tin Mill Black Plate (TMBP) as well as removal of anomaly in the sales tax on input and output.

The ministry stated that the sales tax on final product is levied @ 16 percent whereas on its raw material TMBP, the sales tax is levied @ 19.5 percent.

The ECC was requested that the sales tax may be brought at par to remove the anomaly.

Sources said that proposal of tariff protection to the industry manufacturing electrolytic tinplate was opposed by the FBR stating that the manufacturers of ETP already have sufficient concessions available to them and their request for further reduction of customs duty does not merit consideration.

The FBR stated that after examining the report of the National Tariff Commission it has been observed that NTC has based its recommendation of reduction in customs duty on secondary quality Tin Mill Black Plate (TMBP) from existing 15 percent (concessionary) to 10 percent (concessionary) on the grounds that imports are cleared under "declared values" which are under-invoiced.

The FBR stated that the Directorate General of Customs Valuation, Karachi has already issued a valuation ruling, which had fixed the values of finished product, Electrolytic Tin Plate (ETP) (secondary quality) and Tin Free Sheets (TFS) (secondary quality) at $752.25/MT and $733.20/MT.

Similarly, value of secondary quality Tin Mill Black Plate (TMBP) has also been fixed at $591/MT.

Hence, it is not correct that imports are being cleared at "declared values" or that the same are under-invoiced.

The manufacturers of ETP are also entitled to the benefit from the duty concession.

Thus, the manufacturers of Electrolytic Tin Plate (ETP) avail sufficient cumulative benefits vide above referred Valuation Ruling and SRO 565(I)/2006viz-a-viz the importers of finished product, ie Electrolytic Tin Plate (ETP).

The FBR added that in the light of the above, it is evident that the manufacturers of ETP already have sufficient concessions,

therefore, their request for further reduction in customs duty does not merit consideration.

Ministry of Commerce submitted in the summary to the ECC that NTC conducted a public hearing with all relevant stakeholders as per NTC"s procedure and concluded that present capacity utilisation of domestic industry is around 30 percent whereas major domestic demand of secondary quality tinplate is met by the imported ETP because of high under invoicing.

The ministry further stated that the domestic market comprises both prime quality and secondary quality tin plate, but secondary quality tinplate market is overwhelmingly dominated by imported product and domestic industry share in the secondary quality tinplate is decreasing over a period of time due to uncompetitive cost.

Moreover, the domestic industry, in case of secondary quality tin plate is at a disadvantage at assessed value as well as at declared price against imports and apparently the declared price of imported tin plate is under-invoiced.

The assessed value can protect the local industry better by a margin of 6 percent to 10 percent but still cannot provide a level-playing field to domestic industry.

Hence, the protection needs to be provided in tariff.

The Commerce Ministry recommended that the rate of customs duty on secondary quality TMBP may be reduced from existing 15 percent to 10 percent for industrial users of the Electrolytic Tinplate.

The ECC has reportedly approved the summary of Ministry of Commerce despite opposition of the FBR with respect to reduction of customs duty from 15 percent to 10 percent on import of secondary quality TMBP. – *Courtesy Business Recorder*

Documentation measures: certain sectors under FTR to be brought into MTR

The Federal Board of Revenue has proposed some new documentation measures in budget (2012-13) ie, to bring some sectors including commercial importers operating under the Final Tax Regime (FTR) into the Minimum Tax Regime (MTR), deduction of 16 percent sales tax by registered persons on taxable

supplies received from undocumented units and mandatory filing of wealth statements by all individuals from next fiscal year.

Sources told here on Monday that the FBR is working on new measures to bring exempted sectors in the formal tax regime with the help of enforcement and administrative measures to be taken in budget (2012-13).

At present, the FBR was unable to implement the key documentation measure to collect Computerised National Identity Card numbers and National Tax Numbers (NTNs) of unregistered buyers under SRO191(I)/2011.

The Board had further suspended the applicability of SRO191(I)/2011 up to May 31, 2012 and sales tax returns to be filed in June 2012 would not carry the CNICs/NTNs of the un-registered buyers.

As SRO191(I)/2011 is not practically working to obtain basic particulars of the un-registered buyers, the FBR has proposed that every registered unit would be restricted to withhold and deposit the standard rate of 16 percent sales tax on taxable supplies received from unregistered persons.

At present different sectors are operating under the FTR and pay taxes as final discharge of their tax liability.

Bringing sector of the FTR into the MTR would result into documentation of economy because of the reason FBR authorities can examine the books of accounts and quantify the actual profits and gains of the taxpayers, already falling under the final tax regime.

The proposed changes would result in maintenance of books of account to record each and every business transaction which would ultimately promote documentation.

Secondly, such sectors to be brought from the FTR to minimum tax regime could be analysed by the Inland Revenue officials to check their actual profits recoded by the taxpayers into their books of accounts.

One of the proposals is to gradually phase-out the Presumptive Tax Regime (PTR) in a systematic manner.

This could be done by increasing the rates of withholding tax on different industries/sectors operating under the PTR.

In this way, taxpayer will either have to pay higher rate of withholding tax for not maintaining books of accounts or pay lower rate under normal tax regime and file income tax returns.

The proposal is to encourage the people to maintain books of accounts and file their income tax returns.

At present, different sectors are operating under the PTR and finally discharge their tax liabilities.

For example, commercial importers are paying five percent withholding tax; exporters one percent; suppliers 3.5 percent, contractors 6 percent; commission agents 10 percent and other sectors.

These sectors are operating under final discharge of tax liability.

Special treatment is being given to these sectors and they give final tax and they do not have to give any further details through income tax returns.

They only file their statements of final taxation and they do not maintain books of accounts.

To bring them at par with the taxpayers operating under normal tax regime through the concept of equity, the taxpayers would be given an option to operate under normal tax regime at lower rates.

Sources further said that the FBR has proposed in budget (2012-13) that every individual should file wealth statement irrespective of the income declared for the Tax Year.

Under the existing law, it is mandatory for an individual earning over Rs 1 million per annum to file statement of assets and liabilities along with personal expenditure under section 116 of the Income Tax Ordinance 2001.

It has been proposed that irrespective of the quantum of income declared for the tax year, every individual including salaried persons would be liable to file a statement of assets and liabilities (wealth statement).

This would be done by making appropriate amendment in the section 114 and section 116 of the Income Tax Ordinance, 2001.

The mandatory filing of wealth statements by all individuals would ensure filing of assets statement maintained by each person for documentation of the economy, sources added. – *Courtesy Business Recorder*

No complaints against imports from India: antidumping duty proposed on 46 items

National Tariff Commission (NTC) Chairman Prince Abbas Khan on Monday said so far not a single complaint has been received against India and, if received, it will be dealt according to law.

Talking to newsmen at Federation of Pakistan Chamber of Commerce and Industry (FPCCI), Abbas Khan said some sectors of local industries are worried about the expected huge imports from India.

Still there is not a single complaint against India, he added.

"We have safeguard law in place if a complaint is received, we will consider it as per prescribed procedure and subsequent action taken, if required," he added.

He said presently there are some changes suggested in the NTC law according to which chairman and a board member can take a decision on any complaint.

Three members are necessary for making any decision.

He said the Cabinet has approved amendment and now it will be presented to the parliament for final approval.

The chairman said 13 cases of anti-dumping duty are in process and likely to be settled within prescribed time limit.

In Pakistan, antidumping duty was proposed on 46 items of which duty was slapped on some 22 items.

Before tariff liberalisation, the domestic industry was being protected against cheaper imports by introducing high tariff regime ie high customs duty and sales tax, he said.

The chairman assured the business community that all the measures will be taken to protect the domestic industry and if duty is proposed in a proper manner along with documentary proof, the NTC will take a decision.

He said the NTC deals with all the cases on merit and any importer can file appeal against NTC decision in the appellant tribunal.

Acting president of FPCCI, Shaikh Shakeel Dhingra, Shahid Ahmed Khan and others also participated in the discussion. – *Courtesy Business Recorder*

Pakistan Post Foundation: FBR begins to verify taxable supplies

The Federal Board of Revenue has started verification of the taxable supplies made by M/s Pakistan Post Foundation to various other government/semi-government departments and autonomous bodies during 2007-08 to 2011-12 to ascertain reasons for non-payment of tax due against such supplies.

In this connection, the FBR on Monday issued instructions to the Chief Commissioner Regional Tax Office (RTO) Islamabad to verify the tax payments against the supplies made by the said firm.

According to the FBR instructions, the Board has started the exercise for conducting chain audit of manufacturers and wholesale suppliers who have adjusted input tax in excess of the prescribed limit.

During the exercise, the FBR has conducted audit of National Highway Authority.

The desk/digital audit of National Highway Authority carried out by the special monitoring team of FBR revealed that NHA procured taxable supplies for its official use mainly from M/s Pakistan Post Foundation during last two fiscal years ie 2010-11 and 2011-12.

It is also revealed that M/s Pakistan Post Foundation, a company owned by Pakistan Post Office, is involved in making taxable supplies to numerous other Government/ semi-Government departments and autonomous bodies that are under the administrative control of Federal/ Provincial Governments.

However, surprisingly their tax profile indicates 'NIL' tax payment during 2007-08 and 2008-09, while very trivial tax payment during 2009-10, 2010-11 and 2011-12 (till April 2012), FBR said.

The position explained above warrants immediate action for verification with regard to taxable supplies made by the above named firm during the aforesaid tax period and reasons for non-payment of tax due against such supplies.

In case of excess input tax credit, if claimed by the firm and resultantly NIL/little tax payment, deposit of input tax credit claimed by them may also be verified through chain audit of their respective suppliers for the aforesaid tax period.

The verification, as above, may kindly be completed on top priority and report in this regard be sent to the Board by June 10, 2012, positively, the FBR instructions added. – *Courtesy Business Recorder*

Compensation claims: experts question reasons behind rejection

Tax experts have raised legal questions about the reasons for rejection of compensation claims for delay in issuance of income tax refund by declaring such claims as time-barred by tax officers.

Tax experts told here on Monday that some of the filed officers of Regional Tax Office (RTO) Lahore have rejected claims of compensation for delay in issuance of income tax refund by declaring such claims as time-barred under the law.

They said that Federal Tax Ombudsman (FTO) Dr Muhammad Shoaib Suddle had directed the Federal Board of Revenue to write to all field units that deliberate delay in settling genuine refund claims shall not be tolerated and concerned tax officials shall be held personally responsible for any such act of gross maladministration.

Experts raised question that the compensation is sort of penalty due to delay in payment of lawful refund, how it can be rejected on the basis of time-limitation, how and under which provision of law application for seeking compensation from department is required? How it can be rejected on imaginary basis by invoking provisions of section 170(4) of the Income Tax Ordinance, 2001?, they raised further queries.

To seek justice from the FBR's functionaries, in case of pending implementation in C.No 1620-L/2008, a specific request was forwarded to the Commissioner Inland Revenue (CIR), Zone VIII, RTO-II, Lahore, wherein following specific queries were communicated:

i) A sum of Rs 883,007/- has been withheld out of lawful refund as claimed in C.No 1620-L/2008 without any lawful excuse/intimation?

ii) Additional compensation for delay in payment of lawful refunds has not been issued despite repeated requests since the filing of complaint C.No 1620-L/2008.

iii) The order passed by FTO in C.No 1620-L/2008 and in Review dated 31/12/2009 has not been implemented in letter and sprit? Even more than 1/4th of the lawful refund has been withheld without any logical basis?

After a lapse of 2.5 months a show cause notice vide letter No 671/08 dated March 22, 2012 has been issued by the concerned Assistant Commissioner Inland Revenue (ACIR), with the remarks that, "As the compensation is part of refund and for the purpose of issuance of the same it is obligatory to file application within two years as per section 170(2) (c) of the Income Tax Ordinance 2001.

Since no such claim was made along with original application for refund hence it can not be entertained at this stage being barred by time and the undersigned intends to reject your claim u/s 170(4) of the Income tax, 2001.

If you have any objection the same be furnished by given time frame.

In case of non-compliance or unsatisfactory reply order u/s 170(4) shall be made as per facts and legal position of the case, show cause notice added.

Experts said that the FTO has categorically recommended the FBR to issue a directive to all staff to reply to taxpayers letters within 10 days at the earliest.

For the purposes of implementation, specific instructions were issued by the FBR vide letter .No 6(23)/Coord/2011-29707-R dated March 03, 2011 but all relevant issues remained unanswered since December 2011.

They opined that it appears while issuing show cause notice by RTO Lahore, record of the taxpayer has not been consulted, the claim of the taxpayer is solely based on the relief allowed by the higher appellate authorities or refund determined on IT-30 Forms issued by the competent taxation authorities, while the matter of issuance of refund is pending since long without any legal/logical justification, therefore, the department should clarify the following issues communicated by ACIR of RTO Lahore:

Firstly, how and under which provision of law application for seeking compensation from department is required? Secondly, the compensation is sort of penalty due to delay in payment of lawful refund, how it can be rejected on the basis of time-limitation?Thirdly, as stated by the ACIR "no claim was made", when no application was made to department, how it is being

rejected on imaginary basis by invoking provisions of section 170(4) of the Income Tax Ordinance, 2001?

Fourthly, how and under which provision of law 1/4th lawful refund has been withheld/adjusted, while for the last 6 years revenue department is contesting the matter that claims of Refund by taxpayer was not legal being based on unverified payments?

Fifthly, for the sake of arguments if there is any lawful demand of tax exist against the taxpayer in the departmental record, then how the same has been adjusted against the invalid claim of refund by the taxpayer? Sixthly, how a taxation authority can adjust the lawful demand of tax against the illegal (as claimed by department) refund? Who is responsible for this loss of revenue to the national exchequer? – *Courtesy Business Recorder*

Commercial power consumers may be required to obtain NTNs

The Federal Board of Revenue is likely to propose to the Ministry of Finance to make it mandatory for the commercial consumers of electricity to obtain National Tax Numbers (NTNs) for carrying out their business activities in budget (2012-13).

Sources told here on Monday that the FBR is reviewing the budget proposal to make it compulsory for the commercial consumers of electricity to show their computerised national identity card numbers (CNICs) or NTNs to operate as commercial entity.

In last budget, the FBR had floated this budget proposal, but the same was not accepted by the policy markers.

This year, the FBR is expected to once again propose the government to take this documentation measure for expanding the tax base.

In case the government approves the proposal, it could be termed as one of the key documentation measures for 2012-13.

At present, it is not mandatory for the commercial consumers of electricity to obtain NTNs from the tax department.

Even if the commercial consumers of electricity would submit the CNICs to the tax department, it would be enough for the FBR for allocation of the NTNs on the basis of the CNICs.

When CNICs is necessary for opening of the bank accounts or obtaining credit cards etc, the same condition should apply on the commercial consumers of electricity.

When asked about the disconnection of electricity of commercial consumers without NTN, sources said that it would be a harsh penalty to disconnect electricity merely on the basis of not obtaining NTN.

Moreover, the FBR has no formal agreements with the power distribution companies to disconnect the electricity connections of commercial units having no NTN.

The government has made it mandatory for the holders of commercial and industrial connection of electricity, where the amount of annual bill exceed rupees one million, to file income tax returns in last budget.

Through Finance Act 2011, the Board had amended section 114 of the Ordinance 2001 to ensure filing of returns by commercial and industrial connection of electricity, where the amount of annual bill exceeds Rs 1 million.

The industrial/commercial consumers have to pay a reduced rate of withholding tax on monthly electricity bill under section 235 and as provided in Division-IV of Part-IV of First Schedule to the Income Tax Ordinance 2001. – *Courtesy Business Recorder*

EAC to recommend imposition of gross asset tax

A high-profile Economic Advisory Council (EAC), under its convener, renowned economist Dr Hafeez A Pasha, is all set to recommend to the government the imposition of Gross Asset Tax (GAT) on moveable and immoveable assets in the next budget 2012-13, in a bid to bring wealthy people into tax net.

It is yet to be seen whether the incumbent PPP-led regime will accept or reject the proposal that is going to be float by EAC. After the abolition of Wealth Tax during the Musharraf-Aziz regime and introduction of self assessment scheme on the basis of income instead of assets or wealth, the Federal Board of Revenue's (FBR) Intelligence and Investigation (I&I) wing collected data and found that there are certain individuals who possess dozens of plots in expensive housing colonies but are paying just peanuts into the national kitty.

"We have found one individual in Gujranwala who possessed around 70 plots in posh areas but paying taxes of just a few thousands rupees per annum," said an official source here on Monday.

Now the EAC plans to present major proposals in area of direct taxes for the next budget on the pretext that there is need to shift burden of taxation towards direct taxes by reducing major reliance on indirect taxation.

Over 68 percent share of total revenues is collected through indirect taxation while share of direct taxation is restricted to just over 30 percent.EAC sources said that the council is scheduled to meet by the end of this week to finalise its recommendations, and if they are accepted, then they would be inserted into the budget, which is going to be announced on June 1, 2012.

It is relevant to mention here that Sindh had asked the Centre on eve of budget preparation of last year to revive Wealth Tax on assets of rich people of this country in the aftermath of severe floods but this proposal was not accepted by the federal government.

"Keeping in view the rule of equity, it is essential either to impose 2.5 percent Zakat on assets or impose Wealth Tax because it was not justified to keep assets of billions of rupees out of tax net," added the sources.

The sources were of the view that the account holders of meager amount were liable to pay Zakat as it was deducted on the due data but those were out of the tax net that made billions of rupees in last few years.

The official said that the GAT, with rate of one percent, was also proposed on moveable and immoveable assets of individual taxpayers but the main problem lying in the way surfaced in the aftermath of the 18th Constitutional Amendment under which the immoveable assets were falling in the jurisdiction of provincial governments, and Center would not be able to impose tax on it.

"We have asked Ministry of Law to give us legal opinion on this subject whether the federal government is authorised to impose GAT on both moveable and immoveable assets following the 18th amendment" said the sources.

One of senior official of FBR said that the proposed GAT could not be termed as new tax as it would be adjusted against income tax in case of corporate sector companies. There will be no sectors excluded from GAT and if this proposal got through first from Ministry of Law and then the Cabinet and the Parliament, it would plug leakages as there are many companies which show losses or nil income, despite possessing billions of rupees assets. – *Courtesy The News*

C.No.5(1)Exp.I.R/2010 Islamabad, the 14th May, 2012

To,

All Chief Commissioners, LTUs/RTOs
Chief Collector Customs, North/South
All DGs Directorate General of IR/Customs
All Collectors/Commissioners, MCCs/Appeals(IR)

Subject: **Monetization of Transport Facility for Civil Servants (BS-20 to BS-22)**

The Cabinet Division vide letter dated 8th May, 2012 has directed to provide the details of vehicles purchased during the last five years on the following format by 15th May, 2012 positively for placing before the Public Accounts Committee:–

DETAILS OF VEHICLES PURCHASED DURING LAST FIVE YEARS				
S.#	**Make & Type of Vehicle with Engine Capacity and Year of Purchase**	**Purchase price**	**Justification for Purchase of Vehicle**	**Current Status**
1	**2**	**3**	**4**	**5**

2. Keeping in view the urgency of PAC matter, it is requested that the above referred information may please be provided by return FAX positively today for its timely submission to Cabinet Division.

2012 PTR 104 [Trib.]

APPELLATE TRIBUNAL INLAND REVENUE

Syed Nadeem Saqlain, Chairman
Tabana Sajjad Naseer, Accountant Member

EDITOR'S NOTE

Interestingly, the revenue authorities, in their endeavour to collect more and more taxes feel no hesitation in brutally distorting provisions of the Income Tax Ordinance with their unique sense of interpretation. Example of such practice is this case where an attempt was made to invoke rectification on the ground that non admission of liability was a mistake committed by appellant. The Tribunal rejected the plea of the department allowing appeals filed by the taxpayer.

FACTS/HELD

1. The pertinent facts are that taxpayer a University established under the Presidential Order No. 25 of 1985 not formed for profit purposes had been enjoying exemption from income tax under clause (92) of Part I of Second Schedule to the Ordinance Clause (92).
2. The University filed returns of total income for tax years 2005 through 2008 without admission of any liability under section 113 of the Ordinance, learned DCIR rectified the deemed assessment orders under section 221 of the Ordinance levying minimum tax on the basis of the University's revenues.
3. The Learned first appellate authority upheld the departmental action. The matter giving rise to present appeals was applicability of provisions of section 113 of the Ordinance in the appellant's case.
4. For all the tax years involved, appellant's common grievance could be summarized as below:
   (i) Learned DCIR was not justified in assuming jurisdiction under section 221 of the Ordinance as the issue involved

interpretation of legal provisions and hence, fell outside the scope of rectification; and

(ii) University is not chargeable to minimum tax under section 113 of the Ordinance in view of exemption available under clause (92).

5. The learned DR submitted that the University duly admitted liability of minimum tax as applicable under section 80D of the repealed Income Tax Ordinance, 1979 ('repealed Ordinance') up to and including assessment year 2002-2003, non admission of liability on account of minimum tax in later years was a glaring mistake floating on the surface of record and hence was a mistake warranting rectification.

6. The honourable Appellate Tribunal Inland Revenue held as under:

a. it cannot be considered that non admission of liability was a mistake committed by appellant sanctioning the department to adopt a position different from appellant through invocation of provisions of section 221 of the Ordinance.

b. department adopted a legal position different from that of appellant and thus it tantamounts to amendment of a deemed assessment.

c. subject issue fell outside the scope of 'rectification'

d. The learned DCIR, in carrying out the rectification, did encounter a 'legal controversy' and hence, no domain was available to him under section 221 of the Ordinance to enforce the departmental contention.

e. appellant enjoying exemption under clause (92) was not liable to levy of minimum tax under section 113 of the Ordinance.

Appeals accepted.

ITA Nos. 196/LB/2011 (Tax Year 2005), 197/LB/2011 (Tax Year 2006), 198/LB/2011 (Tax Year 2007) and 199/LB/2011 (Tax Year 2008).

Heard on: 31st January, 2012.

Decided on: 31st January, 2012.

Present at hearing: Asim Zulfiqar Ali, FCA, for Appellant. Yasir Pirzada, DR, for Respondent.

ORDER

TABANA SAJJAD NASEER, Accountant Member.

The present appeals have been filed by the taxpayer against the consolidated appellate order dated 06.01.2011 passed by the first appellate authority regarding tax years 2005 through 2008. Through the impugned order, rectifications earlier carried out by learned Deputy Commissioner Inland Revenue, Audit 15, Audit Division-I, Regional Tax Office-I, Lahore under Section 221 of the Income Tax Ordinance, 2001 (hereinafter referred to as the 'Ordinance') have been held to be lawful under the facts and circumstances of the case.

2. Before us, the appellant was represented by Mr. Asim Zulfiqar Ali, FCA (hereinafter referred to as 'AR'), while the respondent department was represented through Mr. Yasir Prizada (hereinafter referred to as the 'DR').

3. The pertinent facts to be recorded are that taxpayer is a University established under the Presidential Order No. 25 of 1985 and being an institution not formed for profit purposes has been enjoying exemption from income tax under clause (92) of Part I of Second Schedule to the Ordinance (hereinafter referred to as 'clause (92)'). Appellant's entitlement to exemption is not disputed at the department's end and hence, no liability was adjudged under section 4 of the Ordinance in respect of its income, if any.

4. The matter giving rise to present appeals is applicability of provisions of section 113 of the Ordinance in appellant's case as while it is the departmental stance that provisions of clause (92) do not extend any exemption from minimum tax. It is University's position that such exemption clause is also applicable in respect of minimum tax leviable under section 113 of the Ordinance. Accordingly, while the University filed returns of total income for tax years 2005 through 2008 without admission of any liability under section 113 of the Ordinance, learned DCIR rectified the deemed assessment orders under section 221 of the Ordinance levying minimum tax on the basis of the University's revenues. The learned first appellate authority upheld the departmental action on legal basis as well as on merits of the issue. Hence, the University is agitating before us the orders of the authorities below by way of subject appeals.

5. For all the tax years involved, appellant's common grievance could be summarized as below:

(i) Learned DCIR was not justified in assuming jurisdiction under section 221 of the Ordinance as the issue involved interpretation

of legal provisions and hence, fell outside the scope of rectification; and

(ii) University is not chargeable to minimum tax under section 113 of the Ordinance in view of exemption available under clause (92).

6. The learned AR separately made submissions before us in respect of each of the above explained stances taken by the appellant. These along with rebuttals thereof offered by learned DR are discussed hereunder separately.

(i) *Resort to rectification provisions to levy minimum tax*

7. In this connection, learned AR argued that the matter involved a clear interpretation of relevant statutory provisions which is evident from the fact that in the impugned rectification orders, a lengthy debate was undertaken by DCIR in arriving at the conclusion that University was subject to levy of minimum tax.

8. Taking this line of arguments, it was the AR's plea that in the event of a matter involving any sort of legal controversy, departmental officials cannot resort to rectification provisions contained in section 221 of the Ordinance to enforce their view. In this respect, reliance was placed on a number of judgments of superior appellate authorities and this Tribunal available on record viz. 65 Tax 257 (S.C.), 58 Tax 37 (H.C), 2010 PTD 1121 (Trib.), 89 Tax 274 (Trib.) and 2009 PTD 521 (Trib.) and Learned AR also read out following operative part of judgment of apex Court in 65 Tax 257 before us whereby *pari materia* provisions of Income Tax Act, 1992 were interpreted.

> "…essential condition for exercise of such power is that mistake should be apparent on the face of record; mistake which may be seen floating on the surface and does not require investigation or further evidence. The mistake should be so obvious that on mere reading the order it may immediately strike on the face of it. Where an officer exercising power under section 35 enters into the controversy, investigates into the matter, reassesses the evidence or takes into consideration additional evidence and on that basis interprets the provisions of law and forms an opinion different from the order, then it will not amount to rectification of the order. Any mistake which is not patent and obvious on the record, cannot be termed to be an order which can be corrected by exercising power under section 35…"

9. On the basis of above reproduced findings of Honorable apex Court, learned AR argued that since the Taxation Officer indulged in interpretation of the provisions of section 113 of the Ordinance and clause (92), no mandate was available to him to proceed under section 221 of the Ordinance.

10. The learned DR opposing the arguments made by the AR submitted that while University duly admitted liability of minimum tax as applicable under section 80D of the repealed Income Tax Ordinance, 1979 ('repealed Ordinance') up to and including assessment year 2002-2003 (the year up to which repealed Ordinance remained effective), non admission of liability on account of minimum tax in later years was a glaring mistake floating on the surface of record and hence was a mistake warranting rectification. In this way, learned DR defended the departmental jurisdiction assumed under section 221 of the Ordinance.

11. The learned AR, when confronted with these facts, clarified that provisions of section 80D of the repealed Ordinance were *non obstante* in nature which is not the case in respect of provisions of section 113 of the Ordinance. Hence, while appellant voluntarily offered minimum tax under section 80D of the repealed Ordinance, it did not consider itself liable to same under section 113 of the Ordinance.

12. This charge in University's stance, he emphasized, was based on the fact that under new legislation, provisions regarding minimum tax were stripped off their *non obstante* status which was earlier applicable and thus University claimed exemption from minimum tax also on the basis of provisions of clause (92). Consequently, it was the argument of the learned AR that non admission of a liability, admitted in earlier years due to a change in relevant legislative framework, did not constitute a mistake warranting invocation of rectification provisions contained in section 221 of the Ordinance.

13. At this juncture, the learned AR also submitted that while in appellant's case, learned first appellate authority endorsed departmental action of assuming jurisdiction under section 122 of the Ordinance, in a parallel case of another University namely Institute of Leadership and Management, which was also represented by the AR, through order dated 15.02.2011, the learned CIR(A) annulled the departmental action on the point of jurisdiction. Consequently, learned AR on the basis of said judgment of CIR(A) argued that impugned order is devoid of any merit. The learned DR could not offer any plausible defense to this contradictory stance adopted by the CIR(A) except that department has agitated the subject un-favourable order before this Tribunal.

(ii) ***Exemption from minimum tax under clause (92)***

14. The Learned AR, on the merits of the issue, drew our attention towards the provisions contained in clause (92) and vehemently argued that under such legal provisions, appellant University enjoyed exemption from imposition of tax in respect of **any sort/type** of income. In this respect, he laid a lot of stress on the word **"any"** used in clause (92). On the basis of such position, he argued that since under section 113(2) of the Ordinance, a taxpayer's revenues are deemed as 'Income' minimum tax is then imposed in terms of such deemed income, and exemption under

clause (92) also applies in respect of such 'deemed income' Learned AR further argued that use of adjective **"any"** in clause (92) makes it evident that exemption thereunder applies to all incomes, whether these are real or deemed through a fiction of law created by legislature.

15. Resting his case on adjective "any", he cited a judgment of apex Court reported as 2006 PTD 2502, wherein such word was commented upon as follows by their lordships of honourable Supreme Court:

> "…
>
> 20. The word 'any' used in subsection (1A) of section 59 of the Ordinance was not without significance. In the case of *Ch. Zahoor Ellahi M.N.A. v. The State* (PLD 1977 SC 273) the import of the word 'any' was considered in the context of section 13(1)(b) of the Defence of Pakistan Ordinance (xxx of 1971) whereunder it was provided that … "no court would have authority to revise such order or sentence…or to transfer any case from a Special Tribunal… or have any jurisdiction of any kind in respect of any proceedings in a Special Tribunal." It was held that word 'any' was of very wide amplitude and was defined in Stroud's Judicial Dictionary as a word which excluded limitations or qualifications and, therefore, "any order" would include both interim as well as final order. Similarly, in *N.W.F.P. v. Muhammad Irshad* (PLD 1995 SC 281), this Court took the view that expression 'any law' was used to enlarge the amplitude of the term to which it was attached and there seemed to be no reason why expression 'any law' occurring in Article 8(1) of the Constitution would be so narrowly construed as to exclude from its purview a regulation which possessed the efficacy of law in a part of Pakistan. …….. in *Amjad v. Commissioner of Income Tax and 2 others* (1992 PTD 513), it was held by a learned Division Bench of the High Court of Sindh that the word 'any' used in the context of section 59 of the Ordinance was a word of expansion indicative of width and amplitude sufficient to bring within the scope and ambit of the words it governed, all that could possibly be included in them……"

16. By drawing strength from the decision of the apex court, the learned AR submitted that exemption available to University was all encompassing and was also extendable to minimum tax which was levied on the basis of an income deemed under section 113(2) of the Ordinance. Special emphasis was placed by learned AR on the findings of the apex Court that the word 'any' embodies in itself anything that is conceivably and possibly be included therein.

17. The learned AR also made another argument in favour of appellant's case. Reference in this respect was made to provisions

contained in omitted clause (11) of Part IV of Second Schedule to the Ordinance [reinserted through Finance Act, 2009 as clause (11A) of Part IV of Second Schedule to the Ordinance] under which exemption from minimum tax was applicable in respect of certain entities. Our attention was drawn towards the fact that under the clause cited *supra*, exemption from minimum tax was extended to certain entities that *inter-alia* enjoyed **partial exemption** from tax under various provisions of the Second Schedule and/or Ordinance.

18. In this background, it was learned AR's argument that as none of the entities, provided with exemption under clause (11), enjoyed exemption in respect of 'any income', it becomes abundantly clear that where any entity's exemption is all encompassing or in other words is extendable to 'any income' thereof, provisions of section 113 of the Ordinance are not attracted *ab initio* and hence, no specific exemption is required to be notified separately.

19. Further to above submissions as to applicability of provisions of clause (92) in respect of minimum tax, the learned AR cited on bar an earlier judgment of this Tribunal in ITA No. 344/LB/2011 wherein similar matter was decided in favour of another educational institution in the following words:

> "…Since the company is working as a non profit making entity, working solely for the purpose of education and not for the purpose of profit and is claiming exemption under clause (92) of Part-I of the Second Schedule to the Ordinance. As the whole receipts of the institution have been accepted as exempt from tax by the department, therefore charging of minimum tax u/s 113 is illegal and against the law. We, therefore, endorse the findings of the learned CIR(A) and maintain the order of learned first appellate authority. …"

20. Responding to above arguments advanced in favour of appellant, the learned DR based the department's case on the provisions of Section 113(1) of the Ordinance. It was his contention that since, such provisions of law were applicable where no tax was payable or tax payable was short of a prescribed threshold *inter-alia* given to availability of an 'exemption', minimum tax was applicable on the appellant despite the fact that it undisputedly enjoyed exemption from tax under clause (92). He strengthened his argument by relying on the provisions of section 113(1) of the Ordinance.

21. On the basis of provisions of law, the learned DR argued that while setting out the scope of levy of minimum tax on certain taxpayers, legislature not only used the word 'any' but also the phrase 'under this Ordinance or any other law from the time being in force', which extends these provisions an overriding status. It was his contention that since word 'any' has also been used in section 113(1) of the Ordinance, the

arguments advanced by learned AR on the basis of use of this very word in clause (92) are also applicable in respect of provisions of section 113(1) of the Ordinance. Accordingly, learned DR reiterated the departmental stance that no refuge was available to appellant in clause (92) so far as the levy of minimum tax was concerned.

22. As regard the ratio decided by this Tribunal through judgment in ITA No. 344/LB/2011, as cited by learned AR on the bar, no rebuttal, plausible or otherwise, was offered by learned DR. Similarly, as to explanations offered by learned AR by placing reliance on the provisions of clause (11) of Part IV of Second Schedule to the Ordinance, learned DR could not come up with any plausible argument.

23. We have given due and anxious consideration to the arguments put forth by able representatives of the rival parties before us. The decisions relied upon before us have also been earnestly considered.

24. So far as the question of assumption of jurisdiction under section 221 of the Ordinance is concerned, we feel persuaded by the arguments cited by learned AR. It is evident from the assessment record as well as the detailed debate undertaken before us by both the representatives that issue involved interpretation of statutory provisions and posed a legal question viz. "whether or not the exemption available to appellant under clause (92) was extendable to levy of minimum tax". Hence, it cannot be considered that non admission of liability was a mistake committed by appellant sanctioning the department to adopt a position different from appellant through invocation of provisions of section 221 of the Ordinance. We do not subscribe to the reason cited by learned DR that this dispute qualified as a 'mistake' in view of the fact that up to and including assessment year 2002-03, appellant was admitting the liability on account of minimum tax. This argument in fact supports the contention of the appellant as this itself required deliberations, debates and arguments etc. it needs no emphasis that a new legislation i.e. Income Tax Ordinance, 2001 took effect from July 1, 2002 and hence, any position based on provisions of late legislation cannot be made a reason to conclude that deviation there from constituted a mistake on the part of the appellant.

25. Consequently, it is evident that departure from the earlier practice by appellant was a conscious and well contemplated move that was based on provisions of the new legislation i.e. Income Tax Ordinance, 2001, as explained by the AR before us. We, therefore, feel no hesitation in holding that department adopted a legal position different from that of appellant and thus it tantamounts to amendment of a deemed assessment. Resultantly, it is evident that the department carried an amendment in the garb of rectification which cannot be endorsed as being legally sacrosanct. In this respect, we find ourselves convinced by the fact that subject issue fell outside the scope of 'rectification' as has been lucidly explained by their lordships of honourable *apex* Court through

judgment reported as 65 Tax 257. The learned DCIR, in carrying out the rectification, did encounter a 'legal controversy' and hence, no domain was available under section 221 of the Ordinance to him to enforce the departmental contention. Consequently the impugned orders suffer form serious legal infirmities and hence, cannot be considered as valid in the eyes of law.

26. In our view, the appellant's case on merit it also quite clear , especially when we take into account the earlier finding already recorded by another honourable bench of this Tribunal in ITA No. 244//LB/2011. The issue, so far as this Tribunal is concerned, stands adjudicated. We feel fully convinced by the submissions of the learned AR that the provisions of clause (92) extends exemption to 'any' income of qualifying educational institutions. Under the provisions of section 113 of the Ordinance, the turnover is deemed to be income of the taxpayer and since the relevant clause grants exemption to all types of incomes. Therefore, the turnover would also remain exempt from levy of minimum tax. The position under the 2001 Ordinance is different form repealed 1979 Ordinance. The provisions of 2001 Ordinance lack *non obstante* characteristics as was provided for in 1979 Ordinance. Under the provisions of 2001 Ordinance, a taxpayer that has been extended an exhaustive and all encompassing exemption in respect of any income cannot be burdened with the levy of minimum tax under section 113 of the Ordinance as 'deeming income' provisions contained in sub-section (2) thereof do not carry a *non obstante* status.

27. Consequently, following the earlier judgment of this Tribunal cited *supra* as well as on the basis of above analysis, we hold that appellant enjoying exemption under clause (92) was not liable to levy of minimum tax under section 113 of the Ordinance. The appeals are thus accepted and orders of the authorities below, being illegal and devoid of any merit, are annulled.

2012 PTR 1122 (H.C. Raj.)

HIGH COURT OF RAJASTHAN

Narendra Kumar Jain-I and Mahesh Bhagwati, JJ.

Mehru Electrical & Engg.(P) Limited
v.
The Commissioner of Income Tax, Alwar & Ors.

FACTS/HELD

1. **Despite "Last Chance" appeal should be adjourned if there is sufficient cause**

2. The department's appeal was adjourned at the assessee's request to 9.02.2010 and it was made clear that it would be the "last opportunity". The assessee's counsel filed an application for adjournment on 8.02.2010 on the ground that he was going to Mumbai for some urgent work. On 9.2.2010, no one appeared for the assessee and so the Tribunal rejected the adjournment application and allowed the department's appeal. On appeal by the assessee to the High Court HELD:

> Ordinarily, it is not incumbent on the Tribunal to adjourn the case when a last opportunity had already been granted to the assessee. However, there may be **number of circumstances where adjournment becomes necessary in the interest of justice**. If Counsel for assessee had to go for some urgent work to Mumbai and an application for adjournment was moved in advance, then in the interest of justice, a **short adjournment** should have been granted. If number of opportunities had already been afforded to the Counsel for assessee, then adjournment could have been granted, on **payment of cost**. The Tribunal has not assigned any reason as to whether reason mentioned in the application for adjournment, constituted sufficient cause for adjournment or not. Even if a **last opportunity** is

granted and case is fixed for hearing and **sufficient cause is shown** on the date fixed for hearing, then the case can be adjourned and it should be adjourned, in the interest of justice. Accordingly, the Tribunal committed an illegality in rejecting the application for adjournment and in deciding the appeal exparte. Appeal remitted to the Tribunal for decision on merits on payment of costs of Rs.21,000 by the assessee.

Appeal allowed.

D.B. Income Tax Appeal No.228/2010.
Decided on: 24th April, 2012.
Present at hearing: R.K. Agarwal, Senior Counsel assisted by Naresh Gupta, for Appellant. Parinitoo Jain, for Respondents.

JUDGMENT

Narendra Kumar Jain-I, J.–

At the request of the parties, arguments were heard and the appeal is being disposed off finally.

2. Assessee/appellant has preferred this appeal under Section 260A of the Income Tax Act, 1961 against the order dated 26.02.2010 passed by the Income Tax Appellate Tribunal, Jaipur Bench 'B', Jaipur(hereinafter referred to as 'the Tribunal'), whereby the Tribunal allowed the appeal filed by the Revenue against the order dated 30.12.2008 passed by the Commissioner of Income-Tax (Appeals), Alwar.

3. Submission of the learned counsel for appellant is that appeal before the Tribunal was fixed on 09.02.2010. Counsel for the assessee had moved an application for adjournment of the case, in advance, on 08.02.2010 on the ground that he is going to Mumbai for some urgent work. The case was taken up on 09.02.2010. Application for adjournment, filed on behalf of Counsel for assessee, was rejected and the case was heard ex-parte and appeal of the Revenue was allowed. He received a copy of order dated 26.02.2010 on 26.03.2010 and preferred the appeal before this Court. He submitted that from para 2 of the impugned order, it is clear that adjournment application was rejected only on the ground that a last opportunity was granted to him to argue the appeal. He submitted that Counsel for assessee had to go outside Jaipur due to some urgent work, but the said request was not considered and by a non-speaking order, application was rejected. He also submitted that even if a last opportunity was granted on last date, it does not mean that on sufficient ground the case can not be adjourned again. Since, it is matter where tax effect is more than Rs. 46 lacs, therefore, it was incumbent on the part of the Tribunal to adjourn the case. He, therefore, submitted that

order of the Tribunal may be set aside and the case may be remitted back to the Tribunal for decision on merits, afresh.

4. Learned counsel for the Revenue defended the impugned order of the Tribunal and submitted that Counsel for assessee was avoiding the hearing and a last opportunity was granted to him, but again he sent an application for adjournment of the case, therefore, the Tribunal rejected the application and heard the Counsel for the Revenue and rightly decided the appeal. Therefore, no interference in the order of the Tribunal is called for by this Court.

5. We have considered the submissions of the learned counsel for the parties and examined the impugned order and original file of the Tribunal, which was summoned by us.

6. The substantial question of law, which arises for our consideration is "Whether, if a case is adjourned by giving a last opportunity to the Counsel for assessee, the same can be adjourned or not, again on the date fixed, if sufficient or reasonable cause exists on that day?"

7. Undisputed facts of the case are that appeal before the Tribunal was fixed on 11.01.2010 and at the request of the authorized representative, hearing of the case was adjourned to 09.02.2010, giving him a last opportunity. Counsel for assessee moved an application for adjournment of the case on 08.02.2010 as he was going to Mumbai for some urgent work. The appeal was taken up by the Tribunal on 09.02.2010 and the application was rejected. Order-sheet dated 09.02.2010 of the Tribunal shows that it is a rubber stamped order-sheet, which has been filled in. It does not show any reason for rejecting the application. It also does not disclose as to whether appeal has been heard and judgment/order has been reserved or next date is fixed in the case. Impugned order has been passed on 26.02.2010, but in the original file of the Tribunal, it is mentioned that date of pronouncement is 12.03.2010. In another rubber stamped ordersheet, the date 26.02.2010 is filled in blank, which is not legible. However, from para 2 of the impugned order dated 26.02.2010, it reveals that a last opportunity was granted to the learned authorized representative of the assessee for arguments in the appeal and the case was fixed for hearing on 09.02.2010. The adjournment application dated 08.02.2010 was rejected because it was clearly mentioned on the last hearing that both the parties are being given the last opportunity.

8. From the proceedings of the Tribunal dated 11.01.2010, it is clear that last opportunity was given and the case was adjourned for 09.02.2010. Application for adjournment was filed on 08.02.2010, which was put up for consideration before the Tribunal on 09.02.2010. From the application, it appears that Counsel for assessee had to go to Mumbai due to some urgent work. Application was available on record. No one was

present on behalf of assessee. Learned Tribunal, in absence of Counsel for assessee, rejected the adjournment application. Ordinarily, it is not incumbent on the part of the Tribunal to adjourn the case again when a last opportunity had already been granted to the Counsel for assessee, however, there may be number of circumstances where adjournment becomes necessary, in the interest of justice. If Counsel for assessee had to go for some urgent work to Mumbai and an application for adjournment was moved in advance, then in the interest of justice, a short adjournment should have been granted. If number of opportunities had already been afforded to the Counsel for assessee, then adjournment could have been granted, on payment of cost. The Tribunal has not assigned any reason as to whether reason mentioned in the application for adjournment, constituted sufficient cause for adjournment or not? Even if, a last opportunity is granted and case is fixed for hearing and sufficient cause is shown on the date fixed for hearing, then the case can be adjourned and it should be adjourned, in the interest of justice.

9. In these circumstances, we are of the view that the Tribunal committed an illegality in rejecting the application for adjournment and in deciding the appeal, exparte, without hearing the learned counsel for assessee, in the facts and circumstances of the present case and order of the Tribunal deserves to be set-aside on this ground alone and substantial question of law, formulated above, is liable to be answered and is hereby answered in favour of the assessee.

10. Consequently, the appeal is allowed. Impugned order of the Tribunal dated 26.02.2010 is set-aside and the case is remitted back to the Tribunal for decision on merits, afresh. However, cost of Rs.21,000/- (Rs. Twenty one thousand) is imposed on the assessee. If the amount of cost is deposited in the Department within a period of four weeks and receipt thereof is furnished in the Tribunal, then the Tribunal will decide the matter afresh on merits, after hearing both the parties, otherwise this appeal will be deemed to have been dismissed and no further opportunity will be granted to the assessee.

11. Parties are directed to appear before the Income Tax Appellate Tribunal, Jaipur Bench 'B', Jaipur on 28.05.2012. No fresh notice in this regard will be issued to the parties by the Tribunal.

12. Registry is directed to send the record of the Tribunal back, immediately.
