Daily Tax News (DTN)

Huzaima & Ikram
November 21, 2012

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Kind regards

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Taxation for economic growth

by

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> Our rulers are "puppets" in the hands of Neo-Colonial masters. They want to keep us subjugated for reasons aptly pointed out by Perkins John in his book *Confessions of An Economic Hit Man*: "**International financial agencies work through the Western governments, especially the US, to offer loans larger than the country's ability to pay; it defaults and has to surrender vote in the UNO, allow USA military bases, and hand over natural resources"**.

It is a great tragedy that our rulers never bothered to devise a rational tax policy for economic growth and redistributive justice. Their sole stress on irrationally-fixed revenue targets—with main incidence on the weaker sections of society and wasteful spending—has retarded growth, created economic mess and social chaos. The persistent failure of successive governments—military and civil alike—to tax the rich, broaden the tax net, crack down on illegal gains and ill-gotten wealth, eliminate fiscal deficit, spend public money prudently and remove socio-economic imbalances has pushed Pakistan into a 'debt prison'. Our economic survival lies in coming out of the 'debt-prison and so-called 'war of terror'—collecting taxes wherever due, abandoning the policy of appeasement towards the powerful and the rich and punishing the plunderers of national wealth. An able leadership having unshakeable determination and pragmatic reform agenda can transform Pakistan into an egalitarian State—true social democracy with economic justice and rule of law.

The primary function of a tax system is to raise revenue for the government for its public expenditure as well as for local authorities and similar public bodies. So the first goal in development strategy as regards taxation is to ensure that this function is discharged effectively. Performance of the Pakistani economic managers on this account has been highly disappointing—fiscal deficit rising to unmanageable level, giving rise to unprecedented debt burden.

A successful tax system reduces inequalities through a policy of redistribution of income and wealth. Progressive rates of income taxes, capital transfer taxes, and wealth taxes are some of the means for achieving these ends. In Pakistan, there has been a shift from equitable taxes to highly inequitable ones. The dependence on indirect taxes—even in income tax law under the garb of presumptive, minimum and separate block taxes—has destroyed the philosophy of judicious taxation. This deviation has transferred the burden of taxes from the rich to the poor.

One of the main tools of tax policy is to increase the level of savings and capital formation in the private sector partly for borrowing by the government and partly for enhancing investment resources within the private sector for economic development. In Pakistan we find a reversal of this principle. Recent years have experienced closure of large industries and recession in the trade market. Besides corruption and incompetence, inconsistencies in the tax policies have forced the business community to search for safer havens abroad, depriving the country of invaluable capital. Similarly, foreign investors feel shy to avail the tremendous Pakistani talent that goes to waste for lack of proper funding—deteriorating law and order situation and energy shortages being main causes.

Pakistan is one of those very fortunate countries of the world that has an abundance of resources and a climate that is fit for simply any activity throughout the year. But thanks to incompetence and "hidden agenda" of economic wizards (sic)—imposed on us by IMF and World Bank—our dependence on imported products has increased manifold, whereas value-added exports have not been given any attention, let alone promoting high-tech industries capable of technological innovations—modern economies are knowledge-based and future is for those who can develop them as quickly as possible.

For technological transfers, rapid industrial growth and employment generation, foreign direct investment (FDI) is desirable. In Pakistan when local investment is dying, expecting FDI is like living in a Fool's Paradise. Tax incentives play an important role in attracting FDI—which has nose-dived in Pakistan during the last four and a half years. Tax policy constitutes an important, if not a determinant factor, for favourable investment behaviour. Unfortunately, our budget makers have always been preoccupied with revenue targets—main thrust of budget 2012-2013 and all earlier ones confirm this—and have never bothered to provide some long-term investment-oriented tax incentives for infrastructure development, investments and employment generation, without which sustainable growth is not possible.

In the absence of required energy needs and worsening law and order situation, the existing industrial units are closing down or working at low capacity. Even special economic zones, where tax incentives are available, nobody is investing for lack of proper infrastructure and unfavourable law and order conditions. Over 80% decline in foreign direct investment during the last five years is a great cause for concern.

Pakistani industrialists and businessmen—fearing loss of life and property as a result of worsening law and order situation, threats from extortionists, acute power shortages, rising costs of doing business and hostile tax policies—are shifting their capital abroad. Investors, both domestic and foreign, prefer a place that characterizes stability, consistency and requisite infrastructure facilities—we lack all these. Tax incentives do matter but not as first priority—any feasible growthoriented project can be profitable after paying reasonable taxes. In Pakistan, corporate taxation is more than 50% of net profit whereas the rich pay either no tax or if at all at maximum rate of 25%. In countries where judicious taxation exists, corporate tax is in the range of 15% to 25%, but rich individuals pay higher taxes if they earn higher incomes and the highest tax rate is in the range of 45% to 55%.

Our tax system is highly unjust—rather oppressive—it taxes the poor for the benefit of the rich. What makes the situation more painful is the fact that whatever is collected goes to benefit the rich and mighty. The State does not provide security of life and property, education, health, transport and housing—basic needs. It violates Article 3 of the supreme law of the land "…from each according to his ability and to each according to his work". The result is exploitation of the poor, economic injustice, social chaos and mayhem—all worsening with each passing day.

Economic challenges faced by Pakistan are multiple and grim— we are trapped in a deadly debt trap, but there is no will on the part of the rulers to come out of it by tapping the real tax potential and stop wasteful and unproductive expenses. Our total debt—internal (Rs. 8 trillion) and external (US$ 60 billion)—is increasing at an alarming rate due to sheer callousness of the rulers. The present government during its tenure has added Rs. 6.3 trillion to debt burden—increase of 103% increase. Resultantly, the government has to spend Rs. 1.2 trillion in debt servicing—nearly 60% of total revenue collection. The is borrowing recklessly to meet bridge burgeoning fiscal deficit—estimated to cross Rs. 2.5 trillion this year, more than the projected tax collection of Rs. 2.3 trillion.

We also face the herculean task of providing jobs to millions—on an average we need to create 20 million jobs annually for young people alone. For achieving this task we will have to ensure that economy grows at the rate of 8% to 10% per annum over a long period of time—for this we need investment of 20% of GDP. It is, thus, imperative to raise tax-to-GDP ratio to 30%. This challenge is also our great opportunity for economic progress. Majority of job seekers are young people, which are our greatest asset—imparting education and skills to them and creating matching jobs is the real challenge. This can be met successfully by assignment of taxes for productive investment and employment generation—our real engine of growth. The prevalent pessimism is due to attitude of the rulers and financial managers, who are "slaves"—they cannot think beyond what they are "commanded" or "trained" to think. They keep on telling us about the symptoms of an ailing economy but never try to cure the real causes of illness.

TAXING THE POOR FOR THE RICH!

The people of Pakistan are the most heavily taxed nation in Asia. The privileged classes—ruling the country for the last six decades—are the main culprits who do not pay personal taxes on their colossal wealth and incomes and are beneficiaries of enormous loan write-offs. They are guilty of plundering and wasting public money. The State has become so callous that people, living below the poverty line, are subjected to tax on the purchase of salt—sold under brand names. While poor are dying of hunger, abandoning their children, the President, Prime Minister, Governors, Chief Ministers, army of ministers, state ministers and their lackeys are wasting millions on their "security", personal comforts, lunches, dinners and visits (domestic and foreign)—adding insult to injury, they announce tax amnesty schemes for "whitening" their ill-gotten wealth.

We have sufficient natural and human resources—theory of scarcity is a tool in the hands of exploiters to keep the deprived dependent so that their unjust "system" remains intact. We just need to exploit our abundant and productive resources, make pro-people policies, get rid of political and economic subjugation, and through good governance and efficient justice system build an egalitarian society.

We can easily collect taxes of Rs. 8.5 trillion to eliminate fiscal deficit and generate sufficient funds for current expenditure and long-term development projects. We certainly have 10 million individuals having taxable income of Rs 1.5 million (a very conservative estimate). Total income tax collection from them at the prevalent tax rates comes to Rs. 3750 billion. If we add income tax collected from corporate bodies, other non-individual taxpayers and individuals having taxable income between Rs. 400,000 to Rs. 1,000,000, the gross figure should not be less that Rs. 5000 billion. FBR collected a paltry sum of Rs. 716 billion as income tax in fiscal year 2011-12.

Due to rampant corruption, collection of sales tax, federal excise and custom duties is only 30% of actual potential—confirmed in '*Pakistan Tax Gaps: Estimates by Tax Calculation and Methodology*' (http://aysps.gsu.edu/isp/files/ispwp0811(1).pdf), a joint study of FBR, Andrew Young School of Policy Studies at Georgia State University and World Bank. In fiscal year 2011-12, FBR collected Rs. 804.8 billion under the head sales tax, Rs 122.5 billion under federal excise duty and only Rs. 216.9 billion under custom duties. Total indirect collection of Rs 1148.2 billion is pathetically low—it should have been at least Rs 3500 billion. If prevalent tax gap is bridged, the total revenue collection cannot be less than Rs. 8500 billion.

We can never come out of the 'debt trap' unless real tax potential is tapped, the mighty sections of society are taxed and tax policy is used as a tool for economic growth and equitable distribution of wealth. The main emphasis of tax policy should be taxing the unproductive sectors to divert money to productive sectors. At the same time, it is necessary to ensure redistribution of income and wealth through progressive taxation—taxing the rich for the benefit of the poor. At present, we are taxing the poor for the benefit of the rich. The rich and mighty squandered public money to keep the country in debt-enslavement—the main cause of our subjugation. We can never overcome it unless we become a self-reliant economy.

While terrorists and gangsters are challenging writ of the State in Karachi and elsewhere, the State is wasting billions of dollars on the so-called "war on terror". This war has caused Pakistan not only a colossal economic loss of nearly US$ 80 billion so far, but armed conflicts coupled with drone attacks killing innocent civilians, have pushed Pakistan in a situation where society and its institutions are at the risk of survival—one obvious outcome is massive flight of capital—when lives are at stake how can people risk their investments? Economic survival of Pakistan depends on ending the so-called 'war on terror' as early as possible to forestall further bleeding of resources, terrorism and militancy. We need to forge friendly ties with all countries, enhance trade and boost investments in all spheres.

Taxation in welfare states serves as a catalyst for industrial and commercial expansion, economic growth and support of the weaker sections. But in Pakistan, ill-directed, illogical, regressive and unfair taxes have devastating effect on the industrial and business growth. Had our financial and tax managers concentrated on economic growth and productivity, tax revenues would have risen substantially. They have failed to realise that investment-related tax incentives not only increase revenues but create jobs and prosperity for all, whereas oppressive taxes destroy economy and give rise to poverty. For economic growth, the present structure of FBR and mindset of tax administration needs to be changed. The politically-appointed high-ups in FBR "collect" funds for themselves and their masters. They also protect the tax evaders and plunderers of national wealth—frequent tax amnesty schemes and immunities testify to it. These high-ups force field officers to meet budgetary targets by hook or by crook—they penalise honest taxpayers and facilitate the tax evaders. The taxation officers, having no will to bring tax evaders into tax net, are always keen to squeeze the existing taxpayers—creating huge tax demands arbitrarily—abusing their authority and vast discretionary powers. The generally accepted principles of taxation are **efficiency** (explained by reduction in distortions in the allocation of resources), **equity** (requiring the more able to bear burden of paying tax at higher rates) and **effectiveness** (insulating tax machinery from all outside influences). How can these principles be enforced in Pakistan when tax machinery is repressive, both in thinking and practice?

The failure of our rulers to tax the rich and mighty is the core problem. By fixing revenue targets in isolation and without making necessary efforts to improve productivity and economic growth, have created a dilemma, where the government can neither afford to give any tax relief package to the trade and industry [due to growing fiscal deficit] nor can it achieve a satisfactory level of economic growth [due to regressive tax measures]. This is a vicious circle in which we are trapped. We can come out of this tangle and make Pakistan a competitive place where investors find congenial conditions to live and invest for which, first of all, the State would have to protect life and property of its citizens, ensure rule of law, even playing field for all, justice for everybody, a responsible government and transparency in all spheres.

There is dire need of complete reshuffling of economic priorities. We must concentrate on increasing productivity, efficiency and sustained growth—these alone can generate more revenues for the State. The main cause of our prevailing distressing situation is the unholy alliance between inefficient and corrupt politicians and repressive and criminal governments/institutions, which do not give a damn for the welfare of the common man. They force business houses to indulge in malpractices as no genuine work is done without bribery, favours and malpractices.

Successive governments' onerous tax and regulatory policies have pushed millions of people below the poverty line—their number is now about 60 million. We will have to move quickly and decisively to reverse this trend by restoring Pakistan's undeniable geo-strategic and business competitive position in the region. We need to rapidly develop infrastructure and knowledge-based economy. Rational taxation is essential for correcting macroeconomic policies because alternative ways of financing government expenditure—money creation, domestic borrowing and foreign loans—have very harmful effects on the economy.

Like civilizations, tax systems evolve over times. Harley Hinrichs in *General Theory of Tax Structure Change During Economic Developmen*t has mentioned five stages through which tax structure has changed historically as economies have developed. These are:

First Stage: A traditional society relies primarily on traditional taxes like taxes on land, livestock, water rights etc.

Second Stage: Society breaks away from old ways and indirect taxes become more important, especially external indirect taxes (i.e. taxes on foreign trade).

Third Stage: Traditional direct taxes decline relative to national income and governmental revenues.

Fourth Stage: Domestic commodity production increases and internal indirect taxes (excise duties and sales taxes) grow rapidly to replace customs duties.

Fifth Stage: Economy gains maturity and modern direct taxes like personal income and corporate profit taxes become dominant.

Pakistan is still struggling to achieve the Fifth Stage that eventually leads to an egalitarian State—the most desirable entity conforming to promised made with the citizens in Article 3 of the Constitution: **"The State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability to each according to his work"**.

In order to fullfil the above command of Constitution, we need to revamp the entire tax system—use taxation as a tool for economic development rather than collecting money for the luxuries of the rulers. Economy cannot be revived through harsh and illogical tax measures. The tax potential of Pakistan, as highlighted above, is not less than Rs. 8.5 trillion. We can even generate more with rapid economic growth as taxes are nothing but a byproduct of economic activity. If we have more productivity and rapid growth, there would be more taxes that can be utilised for providing better facilities to all. In efficient and fair systems, taxes are imposed through democratic process by eliciting consensus of all stakeholders and also ensuring them that these would be utilised for the welfare of public at large and further development of society.

Pakistan needs a new tax model, capable of generating sufficient resources for the government and helping the country in paying off its ever increasing debt burden. Taxation, a potent instrument to shape and influence the socio-economic policies of a country, has not received due attention in Pakistan. The foremost objective of a tax policy is raising resources for administration and development, transferring of resources from private to public use. A rational tax policy penalizes those who hold assets idly or indulge in luxury consumption. In social democracy, the most important objective of taxation is to provide economic justice, which relates to distribution of tax burden and benefits of public expenditure. Taxation of the rich for the benefit of the poor is at the core of social democracy. It encompasses, besides redistribution of wealth, such questions as treatment of weaker sections of society e.g. women and children, minorities, the disabled and unemployed. All these elements are missing in our polity and tax policy.

FBR has been single-handedly destroying Pakistan's trade and industry by withholding undisputed refunds payable to taxpayers, making excessive tax demands, flouting court judgments, harassing foreign investors through complicated tax procedures and resorting to all kinds of negative tactics and highhandedness to meet its budgetary targets. Our parliamentarians (sic) have been criminally overlooking, rather endorsing, actions of the tax machinery destroying business and industry. While FBR, despite all highhandedness, has failed to meet annual targets, let alone to tap the real tax potential of Pakistan, its oppressive tax policies are pushing millions of Pakistanis below the poverty line—courtesy overwhelming emphasis on indirect taxes (70% of total collection) that take larger portion of income of the poor and facilitate the rich to become the richer.

Pakistan is in dire need of establishing a number of "Employment Zones', which should be low-tax or tax-free for corporate income and for companies creating new jobs. It will be an effective tool to reduce the mounting unemployment burden and to help boost industrial/business growth. The government should identify areas where structural employment is particularly high and then earmark revenue for establishing employment zones in those areas. Out of total collection of taxes at least 25% should be transferred directly to an independent fund for establishment of ‘employment zones’.

The rich in Pakistan are either outside the tax net or do not pay personal taxes in accordance with their actual ability to pay. As a result, the poor are overburdened with indirect taxes and withholding income tax—16% sales tax on most of the items consumed by them and exorbitant withholdings at source even where income is below threshold limit of Rs 400,000. Those who control 90% of resources contribute less than 2% in total tax revenue. We must tax every person having annual income of Rs. 500,000 or more at progressive rates irrespective of source of income—agriculture or non-agriculture. This measure alone would generate tax revenue of over Rs. 6 trillion provided all exemptions and concessions are abolished.

“The fairness of tax system will be undermined if governments cannot show honest taxpayers that they are making a concerted effort to deal with dishonest taxpayers” – **quote from *Improving Access to Bank Information for Tax Purposes* (OECD 2001).**

Merely announcing policies on paper, as has been done in the past, is not going to solve our problems and change the existing scenario. Political change is a prerequisite. Voters will have to elect the people who have not only an agenda for change, but an able and determined leadership that can establish rule of law, fulfill and protect basic rights, ensure free and compulsory education, extend equal opportunities to all, spend taxes for the collective welfare and discourage concentration of wealth, monopolies and money power. To sum up in one line: **For sustainable social democracy and just society we not only need an all-pervasive reform agenda but also an able and determined leadership to implement it**.

Audit of IT return not formally selected is contrary to law: FTO

Federal Tax Ombudsman (FTO) Dr Muhammad Shoaib Suddle has categorically said the audit of an income tax return not formally selected by competent authority is contrary to law. In a recent judgement, FTO observed that the audit of a return not formally selected by the competent authority is contrary to law and tantamount to maladministration under Section 2(3) of the FTO Ordinance. Protracted delay in finalisation of audit also tantamount to maladministration.

The FTO has recommended the FBR to direct the Commissioner to invoke revisionary jurisdiction under Section 122A of the Ordinance to revisit the assessment made under Section 122(4) of the Ordinance, as per law. Details of the issue revealed that the complaint is against illegal assessment under section 122(4) of the Income Tax Ordinance 2001 (the Ordinance). The complainant's income tax Return for Tax Year 2007 was selected for audit by the Commissioner IR, Audit Division, RTO, Sialkot, vide letter No 1223 dated 27.06.2008.

The complainant revised the Return for Tax Year 2007 twice. However, the assessing officer continued with the original audit proceedings, as if no revision of return had taken place. The audit was concluded on 28.06.2012, after a lapse of 4 odd years. The complainant's total income for Tax Year 2007 was determined at Rs 3,657,737 as against declared Rs 272,513 and an additional tax liability of Rs 914,434 was raised.

The complainant assails the treatment accorded by the Dept. as harsh, illegal, oppressive and whimsical. He takes strong exception to the conduct of audit with reference to the original return, ignoring the revised returns. He says that when the revised returns were admitted by the Dept. and taken on record, for the audit proceedings to continue legally a fresh audit selection order was required to be made after each revision. The complainant has also pointed out that stay against arbitrary selection of his return was granted by the LHC but the Dept continued the audit proceedings after expiry of six months on the ground that this being a revenue matter stay could continue only for a six-month period.

The FTO observed that the preliminary departmental objection has been examined and found to be misconceived. Assessment per se is not the moot point in the complaint. Rather, issues involving patent illegality in the conduct of audit such as ignoring the revised returns by way of obtaining specific statutory sanction for their audit and the protracted delay of more than four years in the finalisation of audit proceedings against the complainant figure prominently in the complaint against the Dept.

These are significant maladministration issues and fully justify the Hon'ble FTO's intervention, as held by the Hon'ble Lahore High Court in Writ Petition No 11545 of 2012 on 13.09.2012. On merits, the unusual delay in the finalisation of complainant's audit is a matter of considerable significance. Notwithstanding the extended delay, the Dept. completely overlooked the fact that the complainant filed revised returns twice and yet the Dept. felt no need to select the latest return for audit. Rather, it relied on the selection that was with regard to original return that was no longer in the field after the revised Returns were admitted and deemed assessed under Section 122(3) of the Ordinance.

Even in the appraisal of Profit and Loss Account expenses during audit, the Dept referred to the original Return selected for audit and scaled down the expenses claim in the second revised return to be consistent with the level of expenditure cited in the original return. The upshot of the discussion is that the department never formally selected the second revised return for conduct of audit, the FTO added. – *Courtesy Business Recorder*

'Provisional Tax Assessment Model' initiative: FBR working out tax liability of 3.8 million persons

The Federal Board of Revenue has been actively engaged in finalising a new "Provisional Tax Assessment Model" to work out the tax liability of 3.8 million un-documented persons on the basis of their expenditures prior to launching the tax amnesty schemes.

Sources told here on Tuesday that "Provisional Tax Assessment Model" is a new initiative of the FBR to determine the tax liability of rich persons on the basis of profiles made by the special team at the Board's level. The purpose of the exercise is to know about the possible tax liability of each and every un-documented person, whose profile has been framed by the Board.

In this way, the FBR will already know about the essential and luxury expenditures of the potential individuals and their expected tax liability. In this regard, "Provisional Tax Assessment Model" would automatically calculate the tax in a specific manner. A very advance and sophisticated IT system with the calculating formulas would be used to workout the tax liabilities of these tax dodgers prior to launching of the registration schemes.

The FBR has adopted a cautious approach to use state of the art technology for determining tax liability keeping in view relevant provisions of the tax laws. Thus, Model would automatically calculate the tax on the basis of different kind of expenditures. In this regard, the tax payments by exiting taxpayers have also been taken into account.

According to sources, this is a very big initiative of the FBR to work on the estimated tax of these potential individuals, who are expected to be documented under the registration schemes. In this regard, the "Provisional Tax Assessment Model" would work on the basis of certain formulas to determine tax on the basis of their expenditures like foreign travel, vehicles, bank accounts transactions and several other expenditures, whose information is available with the tax department. – *Courtesy Business Recorder*

IRS and PCS officials: delay in completion of PERs irks FBR

The Federal Board of Revenue has expressed serious concern over the delay in completion of Performance Evaluation Reports (PERs) of the officers of Inland Revenue Service (IRS) and Pakistan Customs Service (PCS) for 2011-12 necessary for promotions to the next grades. In this connection, the FBR has issued instructions to all officials of IRS and PCS here on Tuesday.

According to the FBR instructions, in terms of para 234 of the booklet "A Guide to Performance Evaluation," the PER of all FBR officers for the financial year 2011-12 ie for the period from July 1, 2011 to June 30, 2012 need to be completed as per the specified schedule. The Establishment Division has directed that while sending the promotion proposals of IRS & PCS officers for consideration by the central selection board (CSB), the PER for the financial year 2011-12 must be completed otherwise the proposal will not be included in the agenda of CSB meeting.

It has been observed that despite repeated reminders/instructions issued on the subject by the Board to all concerned officers, the record of various officers due for promotion is still incomplete. Therefore, the competent authority has taken a serious notice of the issue, FBR said.

In view of prevailing situation, the competent authority has directed that all the officers may be advised to furnish their PER forms to the concerned RO/CO, immediately so that the PERs could be initiated/countersigned and also ensure its onward dispatch to FBR (HQ) within two days, the FBR added. – *Courtesy Business Recorder*

Drive against non-duty paid vehicles: FBR facing resistance from big guns

Directorate of Intelligence and Investigation Customs Federal Board of Revenue is unexpectedly facing stiff resistance from influential and powerful persons during ongoing drive against non-duty paid smuggled vehicles. Sources told here on Tuesday that the agency has confiscated 338 luxury cars during last one month.

This means every day, the agency has confiscated over 11 vehicles. The luxury vehicles included Mercedes, Land Cruisers, Parado Jeep, Mark-X and other luxury cars/jeeps. The agency is facing enormous resistance from powerful people who are owners of luxury vehicles in all cities particularly Karachi and Lahore. The first kind of resistance has been faced by the agency's officials when they try to intercept non-duty paid smuggled vehicle escorted by police.

In such cases, it is impossible to stop the luxury vehicle escorted by police mobile squads. Definitely, only powerful individuals including political persons have the contacts to use such police escorts. The directorate's officials face another strange kind of resistance when the owner of non-duty paid vehicle introduce himself as serving or retired official of any defence related organisation. It has been claimed that the vehicle belongs to such defence related institution.

The third kind of resistance is that Sardars, feudal lords, Waderas and such kind of leaders have armed bodyguards with them. If any such powerful Sardar or his son is driving a non-duty paid luxury vehicles, it is not possible to stop him in the presence of armed bodyguards.

In other cases, private security guards are also sitting in the luxury smuggled cars. The agency has no clue whether these armed bodyguards have licenses weapons or not. There are also cases, where such luxury vehicles have police or government number plates, barring the agency from directly taking action.

The worst kind of resistance is that non-duty paid smuggled vehicle has been driven by any women who is not ready to leave the vehicle. This is the most common kind of resistance witnessed by the agency's officials during their day light operations in all major cities.

Usually, if a women driving non-duty paid luxury car, she simply refuse to leave the vehicle and make unnecessary hue and cry. As the directorate has no lady searchers, it is not possible for men staff to forcefully seizure smuggled vehicle. This situation has been witnessed in different cases when the driving women simply refuse to stop the car or leave driving seat.

In such all cases, the directorate's officials find it very difficult to intercept and seizure vehicles due to different kinds of situation practically witnessed on the roads, sources added. The agency's officials have also found that many vehicles have been disappeared from roads, as the owners are now well aware about the ongoing drive against smuggled cars. As far as pressure/influence is concerned after seizure, sources said that once smuggled vehicle is confiscated, the directorate's officials simply threatened to register FIR against owners who try to pressurize them.

During the ongoing operation, it has been noticed that most of the confiscated luxury vehicles belongs to powerful and influential persons. These personalities are making attempts to influence the agency's officials to stop them for further action against them. Despite this resistance, the directorate has been able to seize 338 vehicles during last one month. The agency has also initiated criminal proceedings under the Customs Act 1969 against the owners of non-duty paid smuggled vehicles. – *Courtesy Business Recorder*

FBR pays over Rs 75 million fees to lawyers in 11,000 cases: Hafeez informs National Assembly...

Finance Minister Dr Abdul Hafeez Sheikh has informed the National Assembly that the Federal Board of Revenue has paid a huge amount of Rs 75.539 million as special fee to lawyers and advocates during 2011-12 to expedite 11,000 appeals/petitions pending in different courts.

In a written reply to a question, the minister stated that the total fee paid by FBR and its field formations to advocates for the year 2011-12 till date revealed that the FBR paid a sum of Rs 14.237

million and its field offices paid an amount of Rs 61.302 million. The House was informed that there are 358 advocates on the panel of advocates of the FBR and their names have been circulated to respective field formations around 11,000 appeals/petitions by or against the Federal Board of Revenue in various courts. There are 1,406 petitions/appeals pending in Supreme Court, 6,116 appeals in at Lahore High Court, 2,285 cases in Sindh High Court, 348 appeals and petitions in Peshawar High Court and 72 with the Balochistan High Court.

The advocates on the panel of FBR are placed by the Law Division after scrutiny and careful examination of credentials, qualification and competence of such advocates. Thereafter the FBR keeping in view the experience and knowledge of advocates about respective fiscal law ie Income Tax, Customs, Federal Excise Duty and Sales Tax endorse their names to its relevant field offices which may be Collectorate of Customs are LTUs/ RTOs depending upon the special expertise of the advocate in the field of respective fiscal laws.

Further while assigning the court cases experience and knowledge of the advocate for handling tax cases is always kept in view. Therefore, it is stated that cases of FBR and its field formations are not entrusted to non-qualified advocates rather their qualification and experience is judged first by Law Division and then by FBR and its field formations to ensure their competence and experience in the respective fiscal law before assigning them cases.

Litigation in Federal Board of Revenue is quite different as compared to other ministries/divisions of the government. In the FBR offices, cause of action/litigation mostly arises because of the actions initiated by the field officers for ensuring correct application of Customs Act 1969, Sales Tax Act 1990, Federal Excise Duty Act, 2005 and Income Tax Ordinance, 2001. When the interpretation of law and determination of duties/ taxes made by the departmental officers is not acceptable to the taxpayers, they invoke the appeal or writ jurisdiction of courts. Thus litigation is a constant and perpetual phenomenon for determination, assessment and collection of taxes and is handled by the respective officers and cases represented in the court through advocates on panel.

The appointment of advocates and fee to be paid to them by FBR and its field formations is governed by rule 27(A) of Rules of

Business. Normal fee structure as prescribed by Law and Justice Division is as under: (i) Supreme Court Rs 50,000 for 1st case and for additional identical each case Rs 10,000 aggregate fee shall not exceed Rs 200,000; (ii) High Court Rs 30, 000 for 1st case and for additional identical each case Rs 4, 000 aggregate fee shall not exceed Rs 100,000.

The minister further informed the House that during 2011-12, in most of the cases, normal fee has been paid to the advocates according to the above stated structure issued by Law & Justice Division. The FBR and its field offices engage advocate/advocates for representation before the courts on special fee only where issue/matter involved in litigation has large revenue impact and opposite side is also being represented before the court by some prominent and high profile advocate/advocates. Chairman, FBR is competent to sanction special fee to an advocate upto Rs 1 million and fee beyond this amount is approved by the Law Division, the minister added. – *Courtesy Business Recorder*

FBR chief for commercial import of used cars

Federal Board of Revenue Chairman Ali Arshad Hakeem has proposed commercial import of used cars instead of depending on import of used cars under three specific schemes including Transfer of Residence (ToR).

Chairman FBR’s comments came at a time when Ministry of Industries headed by Deputy Prime Minister/Senior Minister, Chaudhry Pervez Elahi is supporting reduction in age limit of used imported cars from five to three years in a haste despite opposition by other public sector stakeholders.

Official sources told, National Tariff Commission (NTC), an arm of Commerce Ministry, is also conducting a study to know the impact of used imported cars on the local auto industry. For this purpose, NTC is scheduled to conduct an open hearing on Thursday (tomorrow) wherein representatives of local auto sector have also been invited.

“We have already worked out financial impact of reduction in age limit of used cars on revenue, which will be placed before the Economic Co-ordination Committee (ECC) of the Cabinet on November 26, 2012,” said an official on condition of anonymity. Official documents available with *Business Recorder* revealed, in pursuance of the ECC decision a meeting of the committee was held under the chairmanship of Deputy Prime Minister in Prime Minister Secretariat, Islamabad on 7th November, 2012. Secretary Industries, Secretary Commerce and Chairman Federal Board of Revenue attended the meeting.

Chaudhry Pervez Elahi explained the objectives of the meeting in the light of ECC decision on import of used cars. He stressed that due to heavy influx of used cars - and that too in violation of the policy - the local auto industry had been adversely affected and was forced to curtail production. The vendor industry had also been severely affected due to lesser off-take of parts and many assemblers had closed down. He further added that in order to protect the employments of over 300,000 persons associated with the automotive and vendor industry and to encourage foreign investment, it was essential to provide fair protection to local industry.

Acting Secretary Ministry of Commerce, Munir Qureshi informed the committee that the ministry had initiated studies on the subject through NTC and Pakistan Institute of Trade and Development (PITAD). He suggested that the committee should wait for the reports. Deputy Prime Minister was, however, of the view that large import of used cars had already adversely affected the local industry, and a decision needs to be taken as early as possible.

Secretary Commerce was of the view that the age limit of used cars should continue to be 5 years to provide greater choice to auto buyers. However, if the age had to be reduced to 3 years, monthly depreciation should be increased from the current rate of 1% per month to 1.5 percent per month.

He further pointed out that the prices of locally manufactured cars had gone up significantly during 2011-12 despite depreciating yen and falling inflation. In this situation reducing the age of used cars without reducing the price of locally produced cars would be nothing less than compromising consumer welfare. CEO, EDB stated that the local industry had been advised to cut prices or else they would be out priced by the market.

Chairman, FBR was supportive of the proposal to reduce the age limit from 5 to 3 years provided the local industry agrees to reduce prices. He also proposed to consider commercial import of cars instead of depending upon used cars imported under Transfer of Residence (ToR), and similar other schemes.

Secretary Ministry of Industries, endorsed the viewpoint of the Deputy Prime Minister, and added that during his recent visit to the assemblers and vendors, he had personally seen closed-down vendor units. Secretary Industries was of the opinion that the proposals of commercial import, depreciation rate and reduction in prices of vehicles may be considered separately after further consultations.

After detailed discussions, it was decided that a summary for ECC, recommending reduction of age limit of import of used cars from 5 to 3 years would be moved by the Ministry of Industries in first instance subject to a meeting with auto assemblers to convince them for reduction in prices between the range of Rs 50,000-Rs 100,000 for different types of locally manufactured cars. However, auto assemblers refused to slash cars prices. – *Courtesy Business Recorder*

2012 PTR 1973 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
CHENNAI "C" BENCH, CHENNAI

Dr. O.K. Narayanan, Vice President and S.S. Godara, Judicial Member

FACTS/HELD

1. **Interest paid on borrowing for acquiring house deductible u/s 24(b) & 48**
2. The assessee borrowed funds for purchasing a house. The interest paid on the said loan was claimed as a deduction u/s 24(b). When the house was sold, the interest paid on the said loan was treated as "cost of acquisition" and claimed as a deduction u/s 48 in computing the capital gains. The AO held that as the interest had been allowed as a deduction u/s 24(b), it could not allowed again in computing capital gains. The CIT(A) allowed the claim. On appeal by the department to the Tribunal, HELD dismissing the appeal:

   Deduction u/s 24(b) and computation of capital gains u/s 48 are altogether covered by different heads of income i.e., income from 'house property' and 'capital gains'. Neither of them excludes the other. A deduction u/s 24(b) is claimed when the assessee computes income from 'house property', whereas, the cost of the same asset is taken into consideration when it is sold and capital gains are computed under section 48. There is no doubt that the interest in question is an expenditure in acquiring the asset. Since both provisions are altogether different, the assessee is entitled to include the interest at the time of computing capital gains u/s 48.

Appeal partly accepted.

I.T.A. No.943/Mds/2012 (Assessment Year : 2007-08).

Heard on: 29th October, 2012.

Decided on: 31st October, 2012.

Present at hearing: Guru Bashyam, IRS, JCIT, for Appellant. Ananda Kumar, C.A., for Respondent.

JUDGMENT

Per S.S. Godara:– (Judicial Member)

This Revenue's appeal is directed against the order of the Commissioner of Income Tax (Appeals) VIII Chennai dated 24.01.2012 in ITA No. 53/09-10(A)-VIII for the assessment year 2007-08 in proceedings under section 143(3) of the Income Tax Act 1961 [in short the "Act"].

2. Brief facts of the case are that the assessee (individual), filed his 'return' declaring income of Rs.6,40,440/-. In scrutiny proceedings, the Assessing Officer noticed that the assessee had purchased a house property at T. Nagar, Chennai on 20.01.2003 for Rs.32.64 lakhs. In addition to the said consideration, he paid Rs.4.00 lakhs towards registration cost and also had added further amount of Rs. 39,926/- as cost of improvement. In this manner, the assessee paid net cost of Rs.37,03,926/-. In the enclosures with the return, the assessee had added an amount of Rs.4,82,042/- as interest on housing loan taken in 2003 for purchasing the property. Finally, the assessee sold the said property on 20.04.2006 for Rs.26.00 lakhs.

After taking cognizance of the above facts, the Assessing Officer was of the opinion that since interest in question on housing loan, had already been claimed as deduction under section 24(b) in assessment years 2004-05 to 2006-07, the same could not be taken into consideration for computation under section 48 of the "Act" as the legislative provision did not provide such method of including amount of deduction under section 24(b) of the "Act". Therefore, the Assessing Officer added back the above said interest amount to the income of the assessee from short term capital gains vide assessment order dated 24.11.2009.

4. Further, the assessee had declared income under "other sources" of Rs.26,127/- alleged to have been derived from tax free dividend of Rs.4,720/- with interest of Rs.26,127/-. With regard to the above income, he debited an amount of Rs.9,94,542/- as interest on loan and brokerage amount and the consequential loss was set off against income from other heads.

5. The Assessing Officer did not accept the assessee's contention by holding that since there was no consistency and regular activity of granting loans by the assessee, the same could not be called as a business activity even if some interest had accrued to the assessee. The Assessing Officer also noticed that the assessee had not advanced loan to any other party except the above said. In this manner, on legal principle as well as on facts, the Assessing Officer, added an amount of Rs.9,94,542/- in assessee's total income. In this manner, the assessee's total income was assessed as Rs.21,17,020/-.

6. The assessee preferred appeal against the assessment order, wherein, both the additions made by the Assessing Officer (supra) have been deleted by the CIT(A). Regarding addition of interest amount of

Rs.4,82,042/-, the CIT(A) has held that the assessee was entitled to include the interest amount for computation under section 48 despite the fact that the same had been claimed under section 24(b) while computing income from house property.

Regarding other addition of Rs.9,94,542/- (supra), the CIT(A) has held that the payments made by the concerned creditor to the assessee stood duly proved from the record, which had not been considered by the assessing authority.

It is, in this background, the Revenue has challenged the CIT(A)'s order.

7. The DR, representing the Revenue, reiterated the finding of the assessing authority as well as grounds of appeal and prayed for restoring the additions made by the Assessing Officer. It is the submission of the Revenue that once the assessee had availed section 24(b) of the "Act", he cannot include the same very amount for the purpose of computing capital gains under section 48. In the same manner, regarding other addition under the head "income from other sources" (supra), the contention of the Revenue is that the Assessing Officer had rightly made the addition since the assessee's activity of granting loan to a single person could not be called as business. By referring to the findings of the CIT(A), the DR had submitted for verification of creditors facts only the record has been dealt with by the CIT(A) and not qua the legal aspect of the assessee's claim, which was negatived by the Assessing Officer by holding that the assessee's activity could not be called as a 'business'.

On the other hand, the AR representing assessee has sought to place reliance on CIT(A)'s order as well as findings contained therein. In the light thereof, he prayed for upholding the same and dismissal of the Revenue's appeal.

8. We have considered submissions of both parties at length and also perused the relevant findings of the Assessing Officer as well as CIT(A). Regarding the issue of capital gains, it transpires that there is hardly any dispute that the assessee had availed the loan for purchasing the property in question. Since the assessee had shown the income under the head 'house property', he preferred to raise the claim of deduction under section 24(b) of the "Act", which reads as under:

> *"(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:"*

There is no quarrel that since the assessee's claim of deduction was under the statutory provisions; therefore, he succeeded in getting the same. However, after the property was sold, he also chose to include the interest amount while computing capital gains under section 48 of the "Act", which reads as under:

> *"48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration43 received or accruing as a result of the transfer of the capital asset the following amounts, namely:–*
>
> *(i) expenditure incurred wholly and exclusively in connection with such transfer;*
>
> *(ii) the cost of acquisition of the asset and the cost of any improvement thereto:"*

After perusing the above said provisions, we are of the opinion that deduction under section 24(b) and computation of capital gains under section 48 of the "Act" are altogether covered by different heads of income i.e., income from 'house property' and 'capital gains'. Further, a perusal of both the provisions makes it unambiguous that none of them excludes operative of the other. In other words, a deduction under section 24(b) is claimed when concerned assessee declares income from 'house property', whereas, the cost of the same asset is taken into consideration when it is sold and capital gains are computed under section 48. We do not have even a slightest doubt that the interest in question is indeed an expenditure in acquiring the asset. Since both provisions are altogether different, the assessee in the instant case is certainly entitled to include the interest amount at the time of computing capital gains under section 48 of the "Act". Therefore, the CIT(A) has rightly accepted the assessee's contention and deleted the addition made by the Assessing officer. Hence, qua this ground, we uphold the order of the CIT(A).

9. Coming to the other issue involved i.e. addition regarding income from the head "other sources". We find that the Assessing Officer had turned down assessee's plea by holding that the assessee's alleged loan transaction to the concerned debtor namely Shri S.A. Krishnakanth could not be called a 'business activity' even if it had culminated in some interest which accrued to the assessee. Not only this, the assessing authority also rejected assessee's explanation tendered on facts as well. However, the CIT(A) has found merits in assessee's argument and held that the material on record duly proved the transactions since the details of loan creditors, who had lent money to the assessee stood proved as well as there was evidence that the assessee had also paid interest to them in return. Further, it is also evident that the CIT(A) has nowhere dealt with the legal aspect of the issue i.e., whether the assessee who, called himself to be a salaried employee could raise a plea his loan transaction could be called as a 'business activity' or not even after the same had led to accrual of interest as held by the assessing authority. This vital aspect, in our opinion has escaped the consideration of the CIT(A). Faced with this situation, we deem it appropriate that the CIT(A) shall redecide this legal aspect in accordance with law after affording adequate opportunity of hearing to the assessee. Accordingly, we uphold the CIT(A)'s order in deleting the addition of Rs.4,82,042/- (supra). Regarding other issue

involved i.e. addition of Rs.9,94,542/-, we restore it back to the file of the CIT(A).

10. In the light of the above discussion, the Revenue's appeal is partly accepted for statistical purpose.

Order pronounced on Wednesday, the 31st of October, 2012 at Chennai.
