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Slow growth in FBR revenues

by
*Dr Hafiz A Pasha**

FBR put in a stellar performance in 2015-16. The target for the year was more than achieved. The growth rate was over 20%, the highest since 2011-12. In one year, the tax-to-GDP ratio was raised by one percentage point. The only disappointment, if any, was somewhat slower growth in direct tax revenues. Consequently, the share of income tax in FBR revenues fell from 40% to 38%.

Based on this performance, a moderately ambitious target has been set for 2016-17 of 16% growth. In particular, direct tax revenue is projected to grow by a handsome 31%. This will raise the share of income tax to 43% and contribute to making the tax system significantly more progressive.

A number of taxation proposals have been included in the Budget of 2016-17, to facilitate achievement of the revenue target. The potentially biggest move is the levy of a capital gains tax at the rate of 10% on properties sold within five years of acquisition, based on substantially enhanced valuations.

Other steps include continuation of the super tax, broadening of the coverage of the 1% minimum income tax and imposition of a final tax on rents and builders and developers. In indirect taxes, the excise duty on cement, cigarettes and aerated waters has been enhanced while the flat sales tax on mobile phones has been increased. Customs duties have been rationalised by reduction in number of slabs to four, with the highest rate down to 20%.

Unfortunately, the outcome up to now in 2016-17 has been completely contrary to expectations. In the first quarter, the overall growth rate in FBR revenues is only 4%. Two of the largest taxes, viz., income tax and sales tax, have actually shown negative growth. Initial estimates for the first five months indicate a growth rate of 3%.

What explains the loss of momentum by FBR? There are numerous reasons for this apparent debacle. First, it appears that one of the fundamental reasons for the spectacular growth in sales tax revenues in 2015-16 was the large scale escalation of tax rates on POL products, especially motor spirit and HSD oil. For example, in the case of the latter product the tax rate was raised to a peak of 51%, three rimes the standard rate. However, since April 2016, the price of petroleum products has been left unchanged, despite some increase in import prices. By November, the sales tax rate per liter of HSD oil and motor spirit was down by almost 40% in comparison to the peak rate, implying a loss in revenue of almost Rs 45 billion in the first five months. The Government

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* The writer is Professor Emeritus and former Federal Minister.

has clearly opted to insulate the consumer from a further hike in POL prices, although there has been a modest 3 to 4% increase from the 1st of December.

Today, the price of motor spirit in Pakistan is lowest among the eight South Asian countries. For example, it is 30% lower than the corresponding price in India. The sales tax rate for motor spirit has now been set at 14.5%, compared to peak rate of 20% in September 2016. There is a case for raising this rate to back the standard GST rate of 17%.

Second, there is evidence that a significant quantum of advance tax was taken in the last quarter of 2015-16, to enable achievement of the annual target. The growth rate of income tax revenue in the fourth quarter was over 21%, as compared to 13% in the previous three quarters. Consequently, this has implied a reduction in the growth rate in the first quarter. In fact, FBR has tried to justify its poor performance on the basis of a lower growth rate generally in the first quarter. This is not factually correct. In the three previous years, 2012-13 to 2014-15, the growth rate of FBR revenues in the first quarter was higher than for the year as a whole.

The third reason for the slow growth of revenues up to November 2016 is that FBR has undertaken finally to at least partially clear the backlog of due refunds, thereby implying somewhat lower net revenues. This process is likely to continue for the rest of the year if the liquidity position, in particular, of exporters is to be improved substantially, thereby facilitating exports. In addition, the zero rating of imported inputs into six export sectors has also implied some revenue loss.

Beyond the above reasons for slow revenue growth, there is the reality of slow growth currently in various tax bases. According to PBS, net of the impact of SROs, the growth in the rupee value of imports is only 4% up to October 2016. In fact, POL imports have shown no growth. Last year, iron and steel imports yielded substantial additional revenue from the customs duty plus regulatory duty. Currently, there is negative 2% growth in import of iron and steel products.

Turning to domestic taxes, the large-scale manufacturing sector has lost buoyancy, with growth in value added at current prices of less than 6%. In fact, cigarettes production, the largest source of revenue in excise duties, is down by as much as 43%. Similarly, last year the production of cars increased by 46%, but the output this year, up to October, has fallen by 3%.

There is similar story with regard to withholding taxes in income tax. Revenues are not growing fast because of low rates of return on financial assets, decline in exports, slow implementation of construction activities in the federal PSDP and lack of growth from the presumptive income tax on imports. Overall, the slowing down of the growth process in key areas of various tax bases is restricting the increase in FBR revenues.

Based on the above analyses, what is the projection of FBR revenues for 2016-17? The 'mega' taxation proposal of capital gains tax on property has effectively been abandoned and instead an amnesty scheme has been offered. Overall, a relatively low single digit growth rate is likely in FBR revenues in 2016-17.

The overall shortfall in relation to the target could exceed Rs 250 billion. This will mean that the tax-to-GDP ratio will fall by over 0.3 percentage point from the peak attained last year. Along with the short fall in non-tax revenues, the fiscal deficit in 2016-17 could be higher by almost Rs 450 billion and reach 5% of the GDP, somewhat higher than last year and substantially above the target deficit of 3.8% of the GDP.

The basic question is what the government may wish to do given the prospects of an adverse outcome of fiscal operations in 2016-17. There would have been a strong pressure for a mini-budget if the IMF programme had been operative. The government may be unwilling at this time, given the political environment, to raise taxes.

However, at the minimum, it should consider some action on the direct tax front, including broad-basing of the super tax to large individual tax payers, higher taxation of perquisites, better coverage of companies and AOPs and 1% shares transaction tax on the stock market.

Otherwise, given that the increase in fiscal deficit is also being disproportionately financed currently by higher borrowing from SBP, there is likelihood that the inflation could reach a high single-digit rate by June 2017, especially given the recent jump in oil prices.

South Africa

South Africa may need VAT rate hikes: IMF

Given the prospect of continued low economic growth, and the consequent risk that the Government's fiscal consolidation targets will not be met, the International Monetary Fund (IMF) has suggested that the South African value-added tax (VAT) rate may have to be raised.

Following this month's visit of an IMF mission to South Africa to discuss the outlook for the South African economy, a statement said that "the fiscal measures envisaged under the Medium Term Budget Policy Statement (MTBPS) strike a balance between maintaining debt sustainability and safeguarding the fragile economic recovery."

However, it added that, "in the event that economic growth projections for the medium term were further revised downward, additional measures – such as lower increases in public sector wage rates and a moderate increase in consumption taxes – would be needed to stabilize the debt ratio."

Previous comments from the IMF after this year's Article IV consultation with South Africa also pointed out that, if there was the need for further fiscal consolidation, raising the country's VAT rate toward the emerging market average could be needed. While the MTBPS, released in October, proposed to raise an additional ZAR43bn (USD3.15bn) through tax measures over the next two fiscal years, specific policies were not mentioned.

Last year's report from the Davis Tax Committee discussed the potential impact on the South African economy of raising the VAT rate. It confirmed that an increase to the current South African 14 percent VAT rate would be somewhat inflationary in the short-run, but would have a lesser effect on economic growth than income tax rate rises. – *Courtesy tax-news.com*

Australia

ATO to collect data on ride-sharing services

The Australian Taxation Office (ATO) has released guidance on its Ride Sourcing data matching program, developed to address registration, lodgment, and reporting risks.

The ATO said it will request details of all payments made to ride sourcing providers from accounts held by a ride sourcing facilitator's financial institution for the 2016-17 and 2017-18 financial years. It will match this data against its own records, to identify ride sourcing drivers who may not be meeting their registration, reporting, lodgment, and/or payment obligations.

The ATO added that it will initially use the data to identify and inform ride sourcing providers of their taxation obligations as part of an information and education campaign. It may also initiate compliance action based on the data it acquires.

According to the ATO, the program aims at promoting voluntary compliance and increasing confidence in the integrity of the tax system, and at assisting drivers to comply with their obligations. The Office also intends to use the data obtained to improve its understanding of the behaviors and compliance profiles of individuals and businesses that provide ride sourcing services. – *Courtesy tax-news.com*

ATO Publishes Corporate Transparency Report

The Australian Taxation Office (ATO) has published the tax details of 1,904 large companies operating in Australia, which together accounted for 63 percent of company tax payable for 2014-15.

The ATO's corporate tax transparency report includes 1,579 Australian public and foreign-owned companies with an income of AUD100m (USD74m) or more, and 325 Australian-owned resident private companies with an income of AUD200m or more. Together these companies accounted for AUD42bn of the company tax payable for 2014-15.

The name and Australian Business Number of each company is listed, along with total income, taxable income, and income tax payable. The report also includes entities with Petroleum Resource Rent Tax payable.

The figures in the report are taken directly from tax returns lodged and processed, or amendments advised by the taxpayers concerned, by September 1, 2016. The report does not include any figures resulting from ATO-initiated assurance and risk assessment activities.

The ATO said that there are some taxpayers in the report with nil tax payable for the reporting period. "No tax paid does not necessarily mean tax avoidance, and assumptions about an entity's compliance with their tax obligations, or those of their associated groups, cannot be made solely on the basis of this data," it explained.

Tax Commissioner Chris Jordan added: "These companies may have incurred an accounting and tax loss in the current year or in prior years, and are now using those to reduce current taxable income. Many companies are now publishing information describing any losses or other economic factors that contribute to their taxable position." Jordan also noted that 56 companies have agreed to adopt the Board of Taxation's Voluntary Tax Transparency code.

The Commissioner stressed that "these large players are subject to the watchful eye of the ATO." He said the Office continually engages with the top 100 public or foreign companies. These companies alone paid AUD30bn in tax, with the next 1,100 paying a further AUD10bn. In the case of private businesses, the ATO takes a "group approach – engaging one-to-one with the top 320 groups."

Jordan added that the ATO has renewed its focus on providing early warnings to taxpayers and their advisers, to set out its expectations and "allow them to make more informed tax planning decisions."

Turning to the future, Jordan said he expects the figures to change over time. He pointed out that many companies subject to the new Multinational Anti-Avoidance Law are "still restructuring their affairs and identifying the value of the services conducted in Australia."

"As more value is attributed to sales forces in Australia we would expect more companies to be reporting over the thresholds and would be included in future reports."

On the other hand, Jordan said he anticipates a further drop in the profitability of the energy and natural resources sector, and a reduction in the tax paid by that sector in 2015-16. This would be partially offset by stronger performances in other industries, such as the banking and finance sectors. – *Courtesy tax-news.com*

World

Tax risk increasing for firms with employees working abroad

Companies face greater scrutiny over their tax affairs as more employees are working internationally, with 24 percent of businesses reporting a recent challenge from tax authorities, says PwC.

According to PwC, the OECD's base erosion and profit shifting (BEPS) project has sharpened the focus on the risks posed by employee mobility as international bodies and governments aim to ensure profits are taxed in the territory where business activity is performed. 31 percent of companies say they don't know the exact number of their employees working internationally, PwC's global survey "Managing mobility in a changing landscape" found.

While 58 percent of companies surveyed are aware the BEPS recommendations have significant implications for mobility and their tax position, they said they are unsure how best to deal with the challenges. The majority reportedly recognize the need to make changes and would like to do so before the rule changes are enacted.

According to the report, the informally mobile population (business travelers, cross-border commuters, and international virtual workers) pose particular challenges and risks to employers. Almost a quarter (23 percent) of respondents said they did not know who has responsibility for business travelers and only a third of companies feel their tax and mobility teams work closely together to monitor this.

Ben Wilkins, Global Mobility Partner at PwC, said: "Global work is increasing sharply and as people move in more fluid and informal ways, it creates complex mobility challenges for their employers. Companies must develop an understanding of who their mobile people are, where they are going and what they are doing, to be best placed to identify the risks. As tax authorities worldwide pay closer attention to where an organisation is deemed to be undertaking its business, almost a quarter of companies surveyed (24 percent) have received challenges relating to permanent establishment in the last two years."

"Organizations across the world are coming under ever increasing scrutiny from tax authorities and the financial and reputational risks of falling foul of international tax legislation can be punishing. Tax is no longer an issue purely for the tax function and companies must work across functions to manage the corporate risks of mobility." – *Courtesy tax-news.com*

Taiwan

Taiwan increases PIT thresholds

The Ministry of Finance has announced that, because of the inflation linkage within Taiwan's tax code, personal income tax (PIT) thresholds and brackets will be increased automatically in 2017.

As inflation has exceeded three percent since deductions and thresholds were last restructured in 2013, the PIT exemption will rise next year by TWD3,000 (USD95), from TWD85,000 to TWD88,000, with the tax exemption for those aged 70 or above, their spouses, and dependents rising by TWD4,500, from TWD127,500 to TWD132,000.

Taiwan's six PIT brackets will also be moved upwards, with more of taxpayers' income thereby being taxed at lower rates. For example, the lowest five percent tax bracket will apply to taxable incomes up to TWD540,000, a rise from the current TWD520,000.

Similarly, the next 12 percent bracket will stretch from taxable incomes of TWD540,001 to TWD1.21m (up from TWD1.17m), while the highest 45 percent bracket will cover annual incomes above TWD10.3m (up from TWD10m).

The changes are expected to cost the Government up to TWD6.8bn in lost revenue. – *Courtesy tax-news.com*

Canada

Canadian committee reports on voluntary disclosure program

Canada's Offshore Compliance Advisory Committee has published the findings of its inquiry into the Canada Revenue Agency's (CRA's) voluntary disclosure program (VDP).

The Offshore Compliance Advisory Committee was established in April 2016, with a mandate to provide advice to the Revenue Minister and the CRA on administrative strategies to deal with offshore compliance.

The VDP allows taxpayers to disclose previous omissions or errors in their dealings with the CRA. If the disclosure satisfies the CRA's conditions, the taxpayer will typically face a lower interest charge on the unpaid tax, and will not be liable for criminal prosecution or civil penalties. All evaded tax must be paid.

Among the committee's headline recommendations was that the CRA should provide less generous VDP relief in certain circumstances. It pointed out that for any voluntary disclosure, the VDP provides substantially the same relief and operates with the same conditions and requirements. The committee said that the CRA should view all of the circumstances surrounding the disclosure and that relief from interest and penalties should be reduced in certain cases.

For instance, it argued for less generous relief in cases where "sophisticated taxpayers have sought expert advice and used complex offshore structures to evade significant amounts of tax over several years." It also questioned whether taxpayers that have made a completely voluntary disclosure should receive the same treatment as taxpayers whose disclosure is prompted by CRA activity, and argued that the level of relief should be reduced for repeat users of the VDP program.

The committee said that offshore and onshore (domestic) non-compliance should be treated similarly. "If the circumstances are similar (with respect to the amount of tax evaded, the active efforts made by the taxpayer to avoid detection, the sophistication of the taxpayer and advisers), offshore non-compliance is no more objectionable than onshore domestic non-compliance," it said.

The committee also concluded that although the CRA has generally not encountered difficulty in collecting amounts owing as a result of VDP disclosures, it should require taxpayers using the scheme to pay the estimated tax and interest payable, or to provide adequate security, within a set time frame. It said that where a taxpayer may be unable to provide the CRA with full information, the CRA should ensure that its policy on making a reasonable accommodation for an otherwise good-faith disclosure is clear. The committee hoped that this will encourage disclosures involving incomplete information, particularly in cases of offshore non-compliance.

In addition, the committee recommended that any person making a voluntary disclosure should be required to provide information on the identity of advisors who assisted with non-compliance.

The CRA said that it will use the committee's recommendations to review the VDP's parameters and will announce any changes in late 2017. – *Courtesy tax-news.com*

SAPT agrees to slash fee for opening of Let Pass account

South Asia Pakistan Terminal (SAPT) has principally agreed to slash the fee for the opening of Let Pass account to pay terminal charges by 80 percent. Talking to Business Recorder, Arshad Jamal senior vice chairman All Pakistan Customs Agents Association (APCAA) said that the APCAA delegation met with the senior officials of newly operated SAPT terminal to discuss the working procedure and system in order to deal with the inbound and outbound logistics at Groin yard, Karachi.

On being requested, the CEO SAPT Rashid Jameel had principally agreed to slash the fee for the opening of Let Pass account to pay terminal charges from Rs 0.5 million to Rs 0.1 million besides showing consentient to accept third party pay orders with refund facility in case of excess payment.

Arshad said that CEO SAPT had asked the delegation to share the records of its members for making APCAA smartcard acceptable at the terminal and added that he also agreed not only to establish facilitation office but also allocate separate place for junk and auction cargo to avoid backlog at terminal.

The delegation cited that SAPT was following KICT payment schedule, which may create financial problems for the trade as KICT was collecting unjustified charges - scanning and data charges. In response to the said grievances, the CEO SAPT has assured to facilitate the trade, saying that terminal had flexible policy for the all stakeholders.

Moreover, Arshad said that CEO SAPT had also accepted the request of the APCAA delegation for establishing collection booth at custom house to facilitate the trade in order to avoid untoward incident. Senior Vice Chairman APCAA said that SAPT official also informed the delegation that SOP to accept the delay detention certificate like PICT and QICT would be finalised soon and FBR would also formulate a policy related to frustrated cargo which would be settled in assistance with shipping companies and APCAA. – *Courtesy Business Recorder*

FBR wing detects unregistered cigarette factory in Buner

The Directorate General Intelligence and Investigation (I&I) Inland Revenue (IR), Federal Board of Revenue (FBR), has detected an unregistered cigarette manufacturing factory in small mountain valley of district Buner, Khyber Pakhtunkhawa (KP), using machines of a Karachi-based multinational cigarette manufacturing company.

A senior FBR official told here on Thursday that the directorate of intelligence IR is investigating the case from different angles. Firstly, cigarette manufacturing unit in Buner has not obtained Federal Excise registration and is thus involved in the evasion of Federal Excise Duty (FED). Secondly, how the machines of a multinational company have been purchased by someone in village Chingley, district Buner, for running unregistered cigarette manufacturing unit in the said area? The Karachi regional directorate of I&I IR would inquire whether the company has duly informed the tax department/Large Taxpayer Unit Karachi about selling and transfer of the cigarette making machines to some individual in village Chingley, Buner. Thirdly, the directorate would also check whether or not the machines have been shifted or sold to someone after fulfilment of all legal formalities and rules and regulations with the Large Taxpayer Unit Karachi.

The official said when the raid was conducted at the unregistered cigarette manufacturing unit in Buner, the holder of manufacturing premises threatened the officers of the Directorate General Intelligence and Investigation (I&I) Inland Revenue (IR) Peshawar of dire consequences. However, the credit goes to the raiding team which smoothly carried out the task without any fear. Detailed investigation of the case is under way.

Official documents including photographs of machines available with Business Recorder revealed that Additional Director I&I IR Peshawar, Muhammad Ayaz has submitted an incident report to the director general I&I IR Islamabad regarding raid at the unregistered cigarette manufacturing unit running in village Chingley, Buner.

The incident report said whereas initial investigation conducted by the Directorate of Intelligence and Investigation-IR revealed that a cigarette manufacturing unit is running under the supervision/ control of Waheed Khan at the said address without getting Federal Excise registration and, thus, the unit is involved in the evasion of Federal Excise Duty. In order to probe into the matter, a team consisting of the following members along with support staff was deputed to take necessary legal action under the Federal Excise Act, 2005 and seize/confiscate the goods manufactured in violation of the relevant provisions of the Federal Excise Act, 2005, besides action under rule 29 of the Federal Excise Rule, 2005:

Sarzamin Khan, (Audit Officer Inland Revenue); Saifur Rehman, (Audit Officer Inland Revenue); and Muhammad Tufail, (Inspector Inland Revenue).

The team raided the manufacturing premises, but the said manufacturing facility was found closed. A man was found having alighted fire in far-off corner of the closed premises but despite repeated calls and shouts he gave no response to open the main gate. No other person in or around the factory premises was found. The team returned back and decided to visit the premises under Section 25/26 read with Rule 62/63 of the Federal Excise Act, 2005 again on Saturday (10th December 2016) and reported the following:

The said factory was found opened, four cigarette making machines and one each packing, wrapping and bundling machine were found being installed or were under the process of installation. The examination of these machines reveals that the machines have been purchased from M/s Philip Morris (Pakistan) Ltd, the report said.

The report said that search of the manufacturing premises revealed that one making machine was run on trial basis but was found non-operational on the visit day. Some residuals of trial production were found but no raw material or finished stock either of tobacco or cigarette material was found meaning thereby that machinery was not fully installed and was probably under the process of installation. Since no stock or manufactured goods were found, therefore, the machines were not seized, it said.

The owner Waheed Khan was interviewed who was even unaware of the name of their factory and the brands of cigarettes to be manufactured, which leads to their hidden motives of acting like a facilitator for concealed manufacturing for other local cigarette manufacturers, the report maintained.

It is, therefore, requested that the chief commissioner Inland Revenue (IR), Regional Tax Office (RTO), Peshawar may be approached to post staff of RTO, Peshawar u/s 45(2) of the Federal Excise Act, 2005 so that the manufacturer may be registered under relevant Federal Excise Rules and any loss of revenue to national exchequer may be thwarted.

The owner was strictly directed to visit I&I-IR, Peshawar so that the process of their registration could be ensured and relevant documents could be forwarded to RTO Peshawar for submission to CRO.

Incident report has been submitted to the FBR for information along with videos and photographs of the manufacturing halls and factory premises. Further progress shall be communicated within due course of time, incident report of the additional director I&I IR Peshawar added. – *Courtesy Business Recorder*

2016 TRI 574 (H.C. Punjab.)

HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

S.J. Vazifdar, Chief Justice and Deepak Sibal, J.

The Pr. Commissioner of Income Tax, Gurgaon
v.
M/s Atotech India Ltd.

FACTS/HELD

S. 271(1)(c) penalty cannot be levied in a case where the assessee has relied on legal opinion of a professional and there is no tax impact i.e. the loss disallowed in year one is allowed set-off in a later year

1. For the assessment year 2004-2005, the assessee in its return of income sought to set off its income against the brought forward business losses of the earlier years. Proceedings under Section 143 of the Income Tax Act, 1961 were initiated in the course of which the assessee by a letter dated 13.12.2006 claimed the above set off against another head, namely, of unabsorbed depreciation. Admittedly, the tax effect in either case is nil. Further, it is admitted that even if the respondent was permitted to claim the set off against the unabsorbed depreciation, it would have no financial implication for the future. On appeal by the department to the High Court HELD dismissing the appeal:

   (i) The decision of the Tribunal that the respondent ought not to be made liable for penalty cannot be said to be perverse or absurd. The Tribunal noted that the respondent had claimed the set off of its business income of Rs. 1.85 crores against the brought forward business losses of the earlier years on the basis of a legal opinion received from a leading firm of Chartered Accountants. The Tribunal found nothing clandestine in the manner in which the opinion was sought. In any event, even our attention was not invited to anything which suggests any malafides either in the obtaining of the opinion or otherwise. Further, the loss was allowed to be carried forward in the assessment year, namely, assessment year 2002-2003. Inter alia, in these circumstances, the Tribunal found as a matter of fact that the letter dated 13.12.2006 was voluntary and not merely because a notice had been issued under Section 143(2) of the Act. This is a perception on the basis of the facts of the case and warrants no interference.

(ii) In these circumstances including in view of the fact that there is no financial implication on account of the change in the basis of the claim, no substantial question of law arises in this case.

Appeal dismissed.

ITA-347-2015 (O&M).

Decided on: 30th November, 2016.

Present at hearing: Tajender K. Joshi, Advocate, for Appellant. Salil Kapoor & Sumit Lalchandani, Advocates, for Respondents.

JUDGMENT

S.J. Vazifdar, C.J. (ORAL)–

This is an appeal against the order of the Tribunal allowing the respondent/assessee's appeal against the order of the CIT (Appeals) in respect of the assessment year 2004-2005.

2. According to the appellant, the following substantial questions of law arise:–

> *"1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in cancelling the penalty u/s 271(1)(c) of the Income Tax Act, 1961 of Rs. 62,41,758/-?*
>
> *2. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in holding that rejection of the patently wrong claim of the assessee of setting off of brought forward business loss in its return of income would not amount to furnishing of inaccurate particulars of income/concealment of income and would not be liable for penalty u/s 271(1)(c) of the IT Act, 1961?"*

3. The question is whether the assessee is liable to penalty in view of its change of stand in respect of its return of income for the said assessment year.

4. The assessee was earlier known as Max Atotech Limited. It appears initially to have been a private limited company and was

thereafter converted into a public limited company. For the assessment year 2004-2005, the assessee in its return of income sought to set off its income against the brought forward business losses of the earlier years. Proceedings under Section 143 of the Income Tax Act, 1961 (in short the Act) were initiated in the course of which the assessee by a letter dated 13.12.2006 claimed the above set off against another head, namely, of unabsorbed depreciation. Admittedly, the tax effect in either case is nil. Further, it is admitted that even if the respondent was permitted to claim the set off against the unabsorbed depreciation, it would have no financial implication for the future.

5. The decision of the Tribunal that the respondent ought not to be made liable for penalty cannot be said to be perverse or absurd.

6. The Tribunal noted that the respondent had claimed the set off of its business income of Rs. 1.85 crores against the brought forward business losses of the earlier years on the basis of a legal opinion received from a leading firm of Chartered Accountants dated 15.06.2001. The Tribunal found nothing clandestine in the manner in which the opinion was sought. In any event, even our attention was not invited to anything which suggests any malafides either in the obtaining of the opinion or otherwise. Further, the loss was allowed to be carried forward in the assessment year, namely, assessment year 2002-2003. Inter alia, in these circumstances, the Tribunal found as a matter of fact that the letter dated 13.12.2006 was voluntary and not merely because a notice had been issued under Section 143(2) of the Act. This is a perception on the basis of the facts of the case and warrants no interference.

7. In these circumstances including in view of the fact that there is no financial implication on account of the change in the basis of the claim, no substantial question of law arises in this case.

8. The appeal is, therefore, dismissed.

9. In view thereof, it is not necessary to consider the cross objections filed by the respondent.