

Tax Review/Taxation

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Seminar on income tax held

A seminar was held on tax relating to immovable properties at the Income Tax office the other day. A detailed presentation was organized by the Zone-V, CRTO Lahore on section 236W and its salient features besides a difference in between sections 236C & 236K of Income Tax Amendment Act, 2016.

Commissioner Income Tax Inland Revenue Mehmood Jafri said that the withholding agent who fails to collect tax relating to transfer of immovable properties is personally liable to pay the amount of tax under section 236W and other provisions of Income Tax Amendment Act, 2016.

In addition to the principal amount as above, he added, the default surcharge @ 12 percent per year is also chargeable under section 205. Penalty for non-filing of monthly withholding statement is @ Rs 2500 for each day's default under section 182, he added. He urged the participants to keep updated ATL, which would be updated 15th of each month. He said the FBR has issued Property valuation through SRO 673 dated August 8, 2016. – *Courtesy Business Recorder*

Transporters urged to end strike at Torkham

President, Frontier Customs Agents Group (FCAG) Khyber Pakhtunkhwa and Senior Vice President (SVP), Pak-Afghan Joint Chamber of Commerce and Industry (PAJCCI) Zia-ul-Haq Sarhadi has called for the immediate end of transporters' strike at Torkham. In a press release issued here on Saturday, Sarhadi condemned the charging of an extortion of the Rs 10,000 from each Pakistani truck and Rs 5000 from Afghan transporters in the name of Khak Phulli on the Afghan side of the border.

He said that transporters are on strike for the last five consecutive days against the collection of extortion, resulting in the stranding of hundreds of trucks on both side of the border.

The stranded trucks, beside loaded of Afghan Transit Trade (ATT) goods were also loaded with Nato-ISAF, embassies goods and export bound goods from Pakistan comprising fruit, vegetables, juices, milk, cream, meat, poultry, eggs and other items are perishing. Similarly, he said that empty trucks returning to Pakistan after down loading goods are also being affected by the illegal tax inflicting loss worth millions of rupees to the national economy.

Zia-ul-Haq Sarhadi who is also vice chairman of the All Pakistan Customs Agents Association (APCCA) while condemning the strike has called for its immediate end to save traders from heavy financial losses. He has also requested the Peshawar based Afghan Consul General, Afghan Trade Commissioner and other authorities for taking steps for immediate ending of the strike. He said that the volume of the bilateral trade between Pakistan and Afghanistan which was US \$2.5 billion few months back had declined to US \$1.5 billion. – *Courtesy Business Recorder*

K-E asks FBR to remove tax return difficulties

K-Electric Limited [the company] has asked the Federal Board of Revenue (FBR) to remove difficulties of companies engaged in generation, transmission and distribution of electricity in filing of (Annexure C) monthly sales tax returns with the FBR.

Sources told here on Saturday FBR had received a letter of the said company through its legal firm/chartered accountant about the practical difficulties which were attributable to declaration of its consumers at Annexure-C of Sales Tax Returns filed with FBR.

The company is engaged in generation, transmission and distribution of electricity in Karachi and adjacent licensed area to its 2.4 millions of customers who largely fall in three categories, i.e. residential, industrial and commercial. The last two categories i.e. industrial and commercial include consumers which are registered under Sales Tax Act, 1990 [ST Act] and claim input tax on electricity bills issued by the company. The company on the basis of its database generates electricity bills to these customers. Amongst these sales tax registered consumers, there are most of the consumers who have not yet updated their National Tax Numbers (NTNs) in company's database which is pre-requisite for declaring sales and related output tax in Annexure-C of the of the sales tax return form in respect of registered consumers, it said.

The sales tax charged against the bill issued to consumers whose NTN was not updated in the company's database was clubbed and declared as one line item in Annexure C as sales to "bulk unregistered persons," it said. The Federal Government vide SRO 493(I)/2016 dated 01 July 2016 [SRO 493] has changed the mechanism for filling of on-line sales tax return. Through the new mechanism as envisaged in SRO 493, the suppliers of the goods are required to declare the output tax in Annexure-C of the sales tax return. The output tax so reported by the supplier is available

in Annexure-A of the respective buyer for the claim of input tax. Only such input tax can be claimed which has been declared by the supplier.

It is not humanly possible for the company to entertain their request, especially in last dates of filing of return. The timeline i.e. 10th of following month for filing of Annexure-C under the above scenario is unrealistic for the company which has more than 2.4 million consumers. The company understands that the similar issue was also being faced by the other DISCOs across all over Pakistan and the consumers were being deprived of their legitimate input tax. The Lahore Tax Bar Association has also raised the similar issue vide its letter dated October 24, 2016.

The company appreciates and welcomes the new mechanism of online cross verification of input/output tax between the supplier and buyer for claim of input tax. At the same time, the company states that updating and verifying of thousands of consumers in the database of the company cannot be done in a few days. Due to non-updation of NTN of the customers in company's database and the reporting of the sales tax so charged in the bulk unregistered category has resulted in mismatch of sales tax reported by the company and that claimed by its consumers. In past, the company had been issued numerous notices by tax department whereby it was alleged for short payment of sales tax based on the input tax claimed by the buyers and related output tax was declared in the category of "bulk unregistered" at Annexure C of sales tax returns filed by the company.

Keeping view of the above practical limitations, the company has requested the FBR to extend the date of filing of monthly sales tax return and deposit of tax as per details: Date for filing of Annexure C, 20th of following tax period, date for deposit of tax, 28th of the following month and date for submission of return, 28th of the following month.

The FBR would appreciate that the gas supplying companies have already been given to file sales tax return by 25th day of second month following the tax period from 23 November 2016 enabling them to make proper compliance of the law, it added. – *Courtesy Business Recorder*

FBR can employ 330 IRA officers on enforcement activities

The Federal Board of Revenue (FBR) can effectively use 330 Inland Revenue Audit Officers (upgraded to BS-18) for wide range

of enforcement activities including discovering of new taxpayers, recovery of tax demands, audit and action against tax evaders to generate additional revenue in meeting revenue collection target for 2016-17.

It is learnt that the 330 Inland Revenue Audit Officers have been upgraded to the post of BS-18 and they have requested the Board to assign them enforcement jobs in field formations to utilize their expertise particularly in sales tax and federal excise. The force of 330 Inland Revenue Audit Officers has ample experience of sales tax and FED for the purpose of audit, assessments and recovery of evaded amount of taxes. They have made detection and recoveries in different sectors in the past.

The FBR's Operations Wing can utilize the expertise of this audit workforce having ample experience of sales tax and FED assessments and recovery. This force has traditional experience of FED and sales tax with special focus on detection and recovery of the evaded amount in potential sectors, sources added.

With the help of this audit workforce, the FBR can generate additional revenue in the remaining period of 2016-17.

Meanwhile, All Pakistan convention of Inland Revenue Audit Officers of FBR was held to celebrate upgradation of Inland Revenue Audit Officer's to BS-18. The convention was attended by Inland Revenue Audit Officers across Pakistan including Islamabad /Rawalpindi, Karachi, Peshwar, Faisalabad, Multan, Bahawalpur, Gujranwala and other cities.

Earlier, the FBR in compliance to directives of the Lahore High Court, Lahore in Contempt Petition filed by the Inland Revenue Audit Officers for non-implementation of Supreme Court of Pakistan's Orders by FBR authorities issued a Notification that was presented before the court where by almost 330 Inland Revenue Audit Officers of FBR were upgraded to BS-18 with effect from July 1, 2010.

According to the representatives of the Inland Revenue Audit Officers, important decisions were taken during the said convention that including demand that FBR authorities must treat Inland Revenue Audit Officers now in BS-18 at par with any other BS-18 officers of FBR and its field formations. It was further decided that no such discrimination with the audit officers should be done by the FBR. Tax authorities have been requested to intervene in to the matter and to issue written directive to the Chief Commissioners of RTOs/LTUs across the country to

eliminate discrimination in posting of Inland Revenue Audit Officers. On the other hand, they would be left with no option but to approach Courts for filing of yet another Contempt Petition against FBR.

The representatives of the Inland Revenue Audit Officers further decided that all legal options including judicial fora will be exercised with primary attention on merger of Inland Revenue Audit Officers with BS-18 cadre officers with effect from 01. 07. 2010. In this regard legal teams including officers having vast experience and educational background in law were constituted.

The convention was held under President of the said association Afzal Malik. Senior Core Committee members Afzal Khan, Abidullah Jan, Malik Nawaz, Azhar Abbas Sherazi, Ahmed Sohail, Zafar Sherazi along with legal team Abdul Basit, M. Atif Qureshi, Hafiz Mashood were also present. Tariq Javed, Javed Butt, Aqeel Ahmed, Ashfaq Qamar, Asif Rasool, Sarwar Shah addressed the convention. Sahibzada Hafiz Mashood was stage secretary of the convention. – *Courtesy Business Recorder*

Recovery of money through bank account: notices issued

Lahore High Court (LHC) has issued notices to President of Pakistan, Special Assistant to Prime Minister on Revenue Haroon Akhtar, FBR officials and Government of Punjab in a petition challenging the illegal recovery of money through bank account of a former employee of one of organisations of Punjab government.

Sources told that LHC in a constitutional petition against the President of Pakistan, SA to Prime Minister, FBR employees, a private bank and a Punjab government organisation has issued notices to them. In this case, President has accepted the representation filed by the FBR under section 32 of the Federal Tax Ombudsman Ordinance, 2000 against an order passed by Federal Tax Ombudsman (FTO).

It is learnt that petition was moved by a former employee of a Punjab government organisation through Waheed Shahzad Butt Advocate, challenging the acceptance of representation by the President against the order passed by FTO Chaudhry Abdur Rauf, stating that act of office of President is patently illegal and recovery of tax is unconstitutional.

The petitioner states: “Respondent banker informed that total life time savings available in the bank account have been remitted to

ACIR. Not a single notice/intimation was ever issued by the ACIR/CIR to the petitioner for this patently illegal and unconstitutional activity of snatching of funds. As per record, a sales tax demand was created against the Punjab government organisation. The petitioner approached the CIR/ACIR for seeking refund of his funds, illegally and unconstitutionally snatched but of no avail. Despite repeated visits and long illegal silence, snatched money was not returned.

The petitioner accused that it transpires that IRS officials working in the RTO, Lahore are involved in flouting the fiscal laws, which is not only severe mal-administration of justice but also wastage of precious exchequer resources (taxpayer's money) in futile litigation, while it also proves that supervisory authority is not performing its functions to monitor the patently illegal actions of the IRS functionaries. Therefore, a categorical complaint was forwarded to the FTO. Quite surprisingly during the course of investigation before FTO, the respondents adopted a novel stance that name of the petitioner has been appearing as 20% partner and recovery was rightly made. The stance of the respondents is a practical joke of the century, as how a paid employee can be a partner of 20% in a project owned by the government of the Punjab, the petitioner asked.

The petitioner accused that the ACIR intentionally issued a patently illegal notice to the bank wherein the petitioner has been posed as "proprietor" of Punjab government. This state of affairs sufficiently unmask the real story between the lines what is going on there in the FBR under the supervision of the SA to PM. After detailed hearing, judicious findings have been recorded by the FTO. Said order was challenged before the President. Respondent's challenge to the FTO's jurisdiction is misconceived. Assessment per se is not really an issue in the matter/complaint before the FTO, at any point of time. Of course FBR has every right to file a representation.

However, the FBR does not have a right to distort/misstate/misrepresent facts before the President and this is precisely what FBR has done in the case presently before the President for which respondents must be held responsible for cheating, false statement and dishonesty (respondent is representative of PM on revenue matters, hence, he must be fully aware of the black and white of the Revenue Division employees), the petitioner added.

The petitioner further accused that it appears officials representing office of the President are not following the mandate to diagnose, investigate, redress and rectify any injustice done to a person through maladministration of tax employees administering tax laws. Sections 12, 13 and 14 of the FTO Ordinance, 2000 give ample powers to the FTO to initiate appropriate corrective action or disciplinary/criminal proceedings against a tax employee who in the opinion of the FTO has committed "maladministration." It is the prime duty of office of the President to dispense justice and functionaries representing office of the learned President are supposed to uphold the dignity of law and respect command and orders of the courts. On the other hand, due to illegal acceptance of representations, the process of law is being abused badly by the office of the President, the petitioner claimed.

The counsel stated that the petitioner was an employee of respondent (Punjab Government organisation) and therefore, could not be held liable for the tax liability pending against the respondent. The counsel stated that Federal Tax Ombudsman while recognising this right of the petitioner in the appeal reversed the findings. The counsel stated that remedy of appeal was not available to the petitioner as there was no tax liability adjudged against the petitioner.

The LHC ordered to issue notices to the respondents for 17.01.2017 to file report and para-wise comments on or before the said date. –
Courtesy Business Recorder

C.No.4(99)IT-Budget/2016-Pt-I Islamabad, the 16th December, 2016

INCOME TAX CIRCULAR NO. 19/2016

Subject: **Clarification regarding collection of advance tax on sale or transfer of immovable property under Section 236C of the Income Tax Ordinance, 2001.**

The Income Tax (Amendment) Ordinance, 2016 was promulgated on 31st July, 2016 whereby a new sub-section (4) was added in section 236C of the Ordinance relating to collection of Advance Tax on sale or transfer of immovable property. The aforementioned sub-section is reproduced hereunder for ease of reference:—

“(4) Sub-section (1) shall not apply to:—

(a) A seller, if the seller is dependent of;

(i) a Shaheed belonging to Pakistan Armed Forces; or

(ii) a person who dies in the service of the Pakistan Armed Force or he Federal and Provincial Government; and

(b) to the first sale of immovable property which has been acquired or allotted as an original allottee, duly certified by the official allotment authority.”

2. Some ambiguity/confusion prevailed with regard to the interpretation of the aforementioned sub-section, whereby, a plain reading of clause (b) of sub-section (4) created an impression that exemption from the applicability of section 236C of the Ordinance is available to any/every first sale of immovable property irrespective of qualification/conditions laid down in clause (a) of sub-section (4) of section 236C of the Ordinance which was not the intent of the legislature. Therefore, cognizance of the same was taken and in order to remedy the situation sub-section (4) of section 236C was omitted and a proviso was added in sub-section (1) of section 236C of the Income Tax Ordinance, 2001 through the Tax Laws (Amendment) Ordinance, 2016 dated 31st August, 2016 which is reproduced hereunder:—

“Provided that this sub-section shall not apply to a seller, being the dependent of a Shaheed belonging to the Pakistan Armed Forces or a person who dies while in the service of the Pakistan Armed Forces or the service of Federal or Provincial Government, in respect of first sale of immovable property acquired from or allotted by the Federal Government or Provincial Government or any authority duly certified by the official allotment authority, and the property acquired or allotted is in recognition of or for services rendered by the Shaheed or the person who dies in service.”

3. In light of the aforementioned proviso added in sub-section (1) of section 236C of the Income Tax Ordinance, 2001 it is manifest that exemption from collection of advance tax under section 236C of the Ordinance shall be restricted to a singular transaction represented by the first sale of immovable property by a seller, who is the dependent of a Shaheed belonging to the Pakistan Armed Forces, a person who dies while in the service of the Pakistan Armed Forces or the service of the Federal or Provincial Government in respect of immovable property acquired from or allotted by the Federal Government, Provincial Government or any authority duly certified by the official allotment authority being in recognition of or for services rendered by the Shaheed or the person who dies in service.
