

IMMOVABLE PROPERTY: TREATING MARKET VALUE AS INCOME IS BEYOND COMPETENCE OF FL: LHC

ISLAMABAD: The Lahore High Court (LHC) held to treat the market value of immovable property as income under Entry 47 is beyond the competence of the Federal Legislature, hence is declared ultra vires.

The judgment, authored by Justice Shahid Jamil Khan examined the Federal Legislature's competence to levy income tax on immovable property, invoking fiction of law by using the phrase, "A person shall be treated to have derived, as income chargeable to tax," on capital assets owned by a resident person. This presumption is enforced by inserting Section 7E in Chapter II, captioned "Charge of Tax", of Income Tax Ordinance, 2001 through Finance Act, 2022.

The LHC further held that the provisions of Section 7E are read down to save the taxation on the Capital Value of Assets, which is within the competence of Federal Legislature under Entry 50. It also said that Entry 50 for taxing capital value of assets requires that the assets should be valued as a whole and taxed inseparably.

The judgment said that the curative legislation is expected to bring the provisions, of Section 7E, within the spirit of taxing capital value of assets, and to harmonise it with other provisions of the Ordinance of 2001.

Exclusion of persons under clauses (i), (iii) and (iv) of Section 7E(2)(d), is discriminatory, offending Article 25, therefore, are declared ultra vires. However, the legislature is expected to remove the pointed out expropriatory and confiscatory aspects in the provisions of Section 7E. It said that for avoiding the discriminatory and confiscatory aspect in the charging provision, the orthodox way is that it should be levied indiscriminately to all subjects falling within the mischief of charging provision. However, the exclusion be placed under the exempting provisions, which presuppose the taxation, but exempt whom they choose, for extending benefit to a class or persons, to alleviate hardship and confiscatory aspect and for achieving any policy or administrative goal.

Such exemption, if granted through subordinate legislation is placed before the Parliament for approval. It is a salutary rule of interpretation that exemption is not a right and in case of two interpretations, one favouring the chargeability is to be adopted by courts. Petitioners, being taxpayers, have claimed the taxation under Section 7E as ultra vires of the Federal Legislature's field of competence, listed in Entries 50 and 47 of the Fourth Schedule to the Constitution. They submitted that immovable property has completely been ousted from Federal Legislature's competence to tax, therefore, taxation of income envisaged in Entry 47, cannot be deemed for immovable property.

They explained that all aspects of taxing immovable property have been entrusted to Provincial Legislatures after the 18th Amendment in the Constitution. The emphasis was that excluding phrase in Entry 50 is not of the taxes on immovable property, which are already in the provincial legislature's competence but is of immovable property as a component of capital assets. They had contended that legal fiction is employed, by inserting Section 7E, to overcome the impediment in the Constitution, which is not permissible.

FRUSTRATED CARGOES: NO NOC REQUIRED FROM SBP & MOC, FTO TELLS DGTT KARACHI

ISLAMABAD: The Federal Tax Ombudsman (FTO) has barred the Directorate General of Transit Trade Karachi from asking importers of frustrated cargo to submit NOC from the State Bank of Pakistan (SBP) and the Ministry of Commerce for change in the name of the consignee of Afghan transit goods for home consumption in Pakistan.

In this regard, the FTO issued an order on Friday. According to the FTO's order, the said complaint was filed against the Directorate General of Transit Trade, Karachi in terms of Section 10(1) of the FTO Ordinance, 2000 for not allowing amendment of the consignee name under section 138 of the Customs Act, 1969.

Briefly, the case pertains to amendment of IGM of imported goods which were originally meant for transit to Afghanistan. However, the consignee refused to accept goods and authorized Pakistani importer to import the goods. The Directorate General of Transit has however declined to allow amendment of IGM.

The importer highlighted that there is no restriction under the law against amendment of IGM, release of frustrated cargo whether it be the transit goods or those meant for home consumption in Pakistan. The importer further stated that the foreign exchange in respect of the said consignment has already been transferred to the consignor as confirmed by relevant banks.

It is clear that foreign exchange in respect of the said consignment has already been remitted to the consignor after approval from the State Bank. Moreover, as stated above the amendment of consignee name from the Afghan importer to Pakistani importer is also covered under the provisions of Section 138 of the Customs Act, 1969.

In view of the facts mentioned above, it can be safely concluded that recommendation of the Board to the Directorate General of Transit to ask the Complainant to seek NOC from the State Bank and the Ministry of Commerce before allowing amendment in consignee name and substitution of transit goods for home consumption in Pakistan is redundant, uncalled for and tantamount to subjecting the Complainant to unnecessary hardship in the particular circumstances of the instant case, the FTO's order added.

The FTO has recommended the FBR to direct the Directorate General of Transit to allow amendment of consignee name in order to enable the Complainant to file GD under Section 79 of Customs Act, 1969.

R 8-4-2023

TAFTAN TRADE GATEWAY TO REOPEN AFTER NINE YEARS

QUETTA: The government has decided to reopen Taftan Bazarcha Business Gateway on a trial basis from Saturday (today), almost nine years after it was closed in 2014 over security reasons. According to officials, the high-ups of Pakistan Customs, National Logistic Cell (NLC) and business leaders of Quetta Chamber of Commerce and Industry (QCCI), have reached Taftan to make arrangements for the reopening of the gateway.

The QCCI has long been demanding reopening of the Bazarcha Gateway. They claimed that the closure affected small businesses and deprived the locals of jobs. On Friday, QCCI President Haji Abdullah Achakzai, Senior Vice President Haji Agha Gul Khilji and Vice President Syed Abdul Ahad Agha inaugurated the restoration of trade activities on a trial basis. Mr Agha said that reopening of the Bazarcha Gateway will prove a breath of fresh air for local businesses. He expressed hope that very soon the gateway will be opened for regular trade, providing boost to business and employment opportunities to locals. Earlier, QCCI had signed an agreement with Pakistan Customs for the construction of a business terminal, fencing on the border and other works in Bazarcha. The Federal Board of Revenue, NLC, QCCI, local tribes and the police have also made arrangements for reopening of the gateway.

Dawn 8-4-2023

SMBR ORDERS COMPLETING TAX COLLECTION TARGETS ON TIME

LAHORE: Senior Member Board of Revenue (SMBR) Nabeel Javed chaired a meeting to review the departmental performance at his office on Friday. Member (Taxes) Saqib Manan, Member (Colonies), DG PDMA Imran Qureshi, DG Punjab Land Record Authority (PLRA) Saira Umer, Secretary (Revenue) Mehr Shafiqatullah Mushtaq, Deputy Secretary (Staff) Romaan Burana, Director (Development) Shiraz Ahmad and others were present. The participants briefed the SMBR about their performance.

The SMBR ordered the officials to provide better services to the citizens and treat them politely. Similarly, the tax collection targets should be completed on time and the officers should regularly monitor the ongoing development schemes to ensure their timely completion. He added that the officers should immediately redress the complaints received on the citizens' portal and complete the digital girdawari on time while the remaining 'mouza jaat' should also be computerised as soon as possible. He disclosed that the performance of all officers including Naib Tehsildar and Member Board will be checked through the RCMS surveillance system and the disciplinary action will be taken against those who showed sluggishness in official work. The SMBR asked the DG PLRA to ensure the training of sub-registrars and stamp vendors while steps should also be taken to improve the Arazi centres across Punjab. Citizens are getting revenue services at their doorstep through rural marakaz-e-maal, he noted. The SMBR directed the DG PDMA to ensure the availability of life-saving equipment used in natural calamities at the district level. Similarly, keeping in view the possible flood risks, safety arrangements should be intact keeping in view pre-monsoon. He said special measures should also be taken to prevent industrial disasters and smog and effective coordination with oil and gas pipeline companies should be ensured. He further said that the district emergency operation centres including the provincial control room, should be fully activated.

TN 8-4-2023

TOBACCO CO UNDERSCORES NEED FOR IMPLEMENTING TRACK-AND-TRACE SYSTEM ACROSS ENTIRE INDUSTRY

ISLAMABAD: A national tobacco company, which has implemented Federal Board of Revenue's (FBR) track and trace system, has insisted that all local tobacco manufacturers should implement track and trace to provide a level playing field for all manufacturers. Talking to media here on Friday, Samera Irfan, the CEO of Khyber Tobacco Company informed that it is in the interest of the tobacco industry that the Track and Trace system shall be implemented flawlessly in the country to control counterfeiting and the Federal Excise Duty (FED) evasion in the country. Irfan welcomed the recent announcement by Prime Minister Shehbaz Sharif to expedite Track and Trace installation in all cigarette factories within two weeks. She stated that this is the best and most efficient way to stop counterfeit products and FED evasion. Khyber Tobacco is the first ever national tobacco company to have already implemented Track and Trace across its sales and production.

However, Irfan also commented on the poor implementation of orders on the ground level, stating, these steps including Track and Trace and FED are inevitable to increase tax collection from the tobacco sector. However, what is required is the implementation of these orders by the administrators in a true sense.

High-level meeting in Islamabad, Prime Minister Shehbaz Sharif directed that the automatic Track and Trace system be installed in all cigarette factories within two weeks. He emphasized that law enforcement agencies should provide all possible support to the Federal Board of Revenue (FBR) to prevent the smuggling and sale of illegal cigarettes. The Prime Minister also expressed concern over cross-border cigarette smuggling and directed the posting of officers with a good reputation at border crossings. Irfan also requested the government to improve border controls to discourage non-duty paid smuggled cigarettes, especially at the border with Azad Jammu Kashmir, which is the most popular point of cross-border cigarette smuggling.

Chairman FBR Asim Ahmad has already informed the Senate Standing Committee on Finance that the FBR made 811 seizures in which 61 million sticks of smuggled cigarettes were seized during 2022-23. Irfan insisted that all tobacco manufacturers should implement Track and Trace, not just Khyber Tobacco. Track and Trace is a system used to monitor and track the movement of goods, products, or people throughout a supply chain or transportation process, utilizing technologies such as barcodes, RFID tags, GPS tracking, and other types of sensors to collect data.

MAJOR RESHUFFLE IN FBR

ISLAMABAD: The Federal Board of Revenue (FBR) has transferred and posted 16 senior Inland Revenue officials including three Members and Director Generals /Chief Commissioners under a major reshuffle on Friday. In this connection, 16 senior officials of the Inland Revenue Service (BS-20-22) have been given new assignments with immediate effect.

According to a notification issued by the FBR on Friday, Amir Ali Khan Talpur (Inland Revenue Service/BS-22) Director General, Directorate General of Intelligence and Investigation (Inland Revenue), Islamabad has been given a new assignment as Member, Audit and Accounting FBR (Hq), Islamabad.

Syed Nadeem Hussain Rizvi (Inland Revenue Service/BS-22) Member, FBR (Hq), Islamabad would now work as Member, Admin/HR FBR (Hq), Islamabad.

Sajidullah Siddiqui (Inland Revenue Service/BS-21) Director General, Directorate General of International Tax Operations FBR (Hq), Islamabad has been given a new assignment as Chief Commissioner Inland Revenue, Large Taxpayers Office, Karachi.

Shahid Iqbal Baloch (Inland Revenue Service/BS-21) Chief Commissioner, Large Taxpayers Office, Karachi has been given a new assignment as Director General, Directorate General of International Tax Operations FBR (Hq), Islamabad.

Ahmad Shuja Khan (Inland Revenue Service/BS-21) Member, Audit and Accounting FBR (Hq), Islamabad has been transferred and posted as Chief Commissioner Inland Revenue, Medium Taxpayers office, Karachi.

Muhammad Iqbal (Inland Revenue Service/BS-21) Chief Commissioner, Large Taxpayers Office, Islamabad has been given a new assignment as Member, FBR (Hq), Islamabad. He will continue to hold the additional charge of the post of Director General DNFBPs as per rules. Nasir Khan (Inland Revenue Service/BS-21) Chief Commissioner, Regional Tax Office, Islamabad has been given a new assignment as Member, FBR (Hq), Islamabad.

Aqeel Ahmed Siddiqui (Inland Revenue Service/BS-21) Chief Commissioner, Regional Tax Office, Peshawar has been transferred and posted as Director General, Directorate of Intelligence and Investigation (Inland Revenue), Islamabad.