

Major case of tax evasion in real estate sector detected

Directorate General of Intelligence and Investigation Inland Revenue (IR) has detected a major case of an individual engaged in business activity of real estate development projects and involved in concealment of investments/income, un-explained bank credits and suppression of sales and cost of sales. Sources told *Business Recorder* that the agency has carried out a thorough investigation into the case and exposed the techniques used by the said individual to conceal income and investment in real estate sector to evade taxes. Moreover, this case of housing project in Wah City, detected by the Directorate General of Intelligence and Investigation Inland Revenue is a classic example for the FBR's field formations to detect cases of housing projects across the country.

Details of the case revealed that the subject taxpayer is an Individual registered having NTN with principal business activity of real estate development. The taxpayer purchases, develops and sells land to the general public. Key facts revealed that he is running business as individual making business transaction in personal as well as business bank accounts, but no audited accounts are maintained.

The directorate has found that no evidence of certification of business affairs from the registrar of Co-operative Societies furnished and he is a prescribed person for the purposes of sections 153,149 and 233 of the ITO 2001.

The taxpayer has stated, in his reply to agency's notices under section 176 of the ITO 2001, that he is involved in the business of 'Colony Organising' by purchasing land, developing it and finally selling the same to his customers. Therefore nature of instant taxpayer's business necessitates investigation into different aspects of the case including quantum of lands purchased with following details; copies of mutations of purchased lands; evidence of payments against land purchases with amounts and mode and record/evidence of transactions carried out in development of the said lands like copies of contracts (services) made between 'Earth-moving Contractors' and the taxpayer; copies of contracts (supplies) made between suppliers of construction materials and the taxpayer; evidence of payments to such contractors; details of tax withholding by the taxpayer in respect of aforementioned contracts and quantum of actual business revenues, gross profits and net profits.

The directorate said that nature and quantum of the taxpayer's business also necessitate accounting transparency and evidential strength in terms of its financial transactions and the foremost requirement in this behalf is the recording/flow of business transactions through banks of the business. The taxpayer declares huge amounts of business expenses on account of cost of sales/services (Direct Expenses) and Profit & Loss Expenses (Indirect Expenses) every year. Quantum of business spending and revenues warrants taxpayer's status as Withholding Agent as well as withholdly but analysis has revealed core weakness of the case on that account.

Analysis of his tax declarations has been made with reference to aforementioned aspects of the case. Profiling of taxpayer's declarations, to determine quantum of his business and profits there from, information about his bank accounts was sought and received u/s 176 because bank is the

key mode of conducting such business of purchasing, developing and selling lands for the said colony organizing activity. Information thus received regarding his bank accounts revealed certain facts which do not reconcile with his tax declarations. Certain discrepancies have been noted.

Accordingly, taxpayer was required to explain those discrepancies but he failed to furnish satisfactory evidence to support his declared version. The taxpayer solely relied on the proceedings under section 122 earlier invoked by RTO Rawalpindi and preferred to submit to this office only a plain copy of his reply earlier submitted to the RTO:

Firstly, the said named taxpayer in the instant case derives income from running the business of colony organizing and involved in the business of purchase of land and after developing selling the same to its customers. Entire business activity in this regard is being carried out under the name and style of a Housing Project since 1995-96.

Secondly, taxpayer is engaged in sale of developed land on instalment as well as on cash basis. As it is very settled practice in this nature of business that in case where sale is made on instalment basis, part of total payment is received as down payment and balance amount of the price is recovered through installments. Possession of land is handed over to the customers on final payment of cost of plot. Now when the entire sales arrangements between the seller and purchaser stand finalised, the taxpayer transfers the amount of advances to Sales Account. Till the total sales amount is not recovered entire amount is credited in the books of accounts of the taxpayer and accounted for under the head advances from customers which have been shown in the Balance Sheet. All the Government taxes like Transfer fee, Income Tax and other local levies have to be recovered from the purchaser at the time of transfer / possession of plot.

Thirdly, according to the principle of accounting advances received from the customers are not required to be treated as revenue receipts (sales) till the maturity of entire arrangements of sales.

Fourthly, taxpayer is sole owner of the business as such some bank account was maintained in his own name some of the bank accounts are maintained by him in the Housing Project. Each and every bank deposit (Credit Entry) properly accounted by the taxpayer in his books of accounts. Payments received from customers has properly accounted for in this books of accounts and information required by your good self at this stage has already furnished to the income tax department in response to various notices issued for the tax year 2009 to 2015 from time to time. This issue has very well discussed in detail by the assessing officer while making inquiry for completion the amendment of assessment under section 122(5A) of the Income Tax Ordinance, 2001 for the tax year 2014 & 2015."

However, the taxpayer furnished documents along with the reply including copies of Balance Sheets for Tax Years 2012 & 2013; copies of Amended orders u/s 122(5A) for Tax Years 2014 & 2015; copy of Sale Deed of a property of 'Rawalpindi" and a reply of the taxpayer.

But the taxpayer has failed to furnish evidence of transactions including copies of 'mutations' of purchased lands for his colony development activity; list of those individuals who sold the lands to the taxpayer; details of payments made to the sellers and copies of receipts of tax payments

with land revenue authorities.

In view of taxpayer's failure to furnish factual evidences of his business transactions in support of his declared version, bank accounts statements are the core reliable documents to evaluate and determine quantum of his business. As the nature of his business also necessitates recording of business transactions through banking modes therefore key reliance rests on scrutiny of his bank statements. Accordingly examination and cross-matching of bank statements with his tax declarations have revealed key facts of the case, agency said.

Taxpayer paid Rs 5,800,603 U/s 236K (purchase of asset) @ 2% of the ITO 2001 in TY-2015 which works back to Rs 290,030,150 for value of the asset but no such property has been declared in his wealth statement correspondingly. This transaction has escaped attention of the department even while taking action U/s 122(5A) for the TY-2015. Therefore addition of the same (along with other expenses thereon ie CVT etc) U/s 111 of ITO 2001 to his total income is warranted.

Perusal of his bank accounts statements reveals that the taxpayer has concealed closing balances in his tax declarations as appearing in his Bank Accounts.

Taxpayer has declared Rs 21,354,112 only in wealth statement filed for TY-2013 .

Aforementioned Closing Balances as on 30th June of Bank Accounts have been concealed by the taxpayer in his tax declarations therefore legal action for addition of the same in his total income as income from un-explained sources is warranted.

Further perusal of taxpayer's bank accounts statements reveals that taxpayer has excessively under-declared his business quantum because amounts of credits/deposits (bulk in cash) in his bank accounts far exceed his declared quantum of sales and other sources of income collectively.

Hence the said Bank Credits Differentials exceeding his declared business turnover and other sources of inflows year wise are unexplained warranting legal action to include the same in his total income.

The taxpayer also failed to furnish any evidence of cost of development of the 'colony' like any contracts carried out between the taxpayer and the contractors for supply of goods and services in terms of Section 153 of ITO 2001 and evidence of acquiring of power, gas and water facilities for the 'colony'.

The agency said that the nature of taxpayer's business necessitates making various contracts to develop the colony like earth moving, labour services and supplies of construction materials involving payments to such contractors and the taxpayer being a prescribed person to withhold taxes under various sections like 153, 149 and 233 of the ITO 2001 while making payments on account of his business expenses. And the taxpayer has made such tax deductions (withholding) as 'Prescribed Person', agency said.

The quantum of payments and deductions thereon represent taxpayer's expenses (cost of sales).

And taxpayer's declared cost of sales necessitate reconciliation with his quantum of payments of expenses on which he has made deductions U/s 154, 149 etc. Therefore, a cross-matching of his business expenses (payments) with his declared cost of sales in income tax returns vide computations of income shows huge difference which dilute truth of his declared particulars of income.

In Tax Year-2012, the taxpayer has made total deduction of Rs 738,000 against cost of sales (Expenses) of Rs 41,702,000. Tax deducted is 1.76% of the costs. This renders his cost of sales and the turnover suspicious because even at 5% rate, the worked back costs of sales amount to Rs 14,760,000 and volume of sales be determined accordingly.

In Tax Year-2013, in tax year 2013 tax deducted exceeds even declared amount of cost of sales. Tax deducted is 114% of declared cost of sales. Even against 5% deduction rate the cost of sales worked back amount to RS.919,296,280 instead of just Rs 40,036,875 and correspondingly the turnover. Therefore 'the taxpayer has highly suppressed his sales and cost of sales. Audit action is warranted.

During Tax Year-2016, taxpayer has made no deductions at all against expenses of Rs 2,011,650,118 during 2016. This requires explanation from the taxpayer with evidences of transactions in reconciliation with his tax deductions made by him as withholding agent and as withhold also. In the absence of evidence the taxpayer's direct cost on purchases of lands cannot be determined and even no evidence of details of sale of lands (Plots) by the taxpayer to his customers as mentioned have come up like list of allottees/buyers of plots; details of payments received from customers and evidence of tax withholding from buyers of the plots.

In the absence of the aforementioned evidences of the factual transactions, taxpayer's plain explanation is not plausible to support truth of taxpayer's declarations. This information is required to be brought on record while proceedings U/s 177 by the field formation.

The investigation further revealed that he has declared personal expenses on account of gifts in his tax declarations. The said transactions require evidence and mode of transaction like copies of instruments used in the gift transactions.

As the nature and style of taxpayer's business requires recording of his business transactions through bank however he has concealed volume of his transactions in terms of closing balances in the banks and credits exceeding his declared quantum of business turnover which warrant legal action for addition of the same to his income. Action also included proper taxation in the case requires acquisition of complete record regarding; list of land transferors to the taxpayer along with mutation record registered with land revenue department and list of allottees of the plots in housing Scheme. Therefore the case warrants action U/s 177 of the Income Tax Ordinance 2001.

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