

**IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD**

APPEAL NO. 242-02-2020

Pervez Said

Versus

Federal Board of Revenue

Date: 02.02.2022.

Fawad Malik: Information Commissioner

**A. APPEAL.**

1. The brief facts of the appeal are that Mr. Pervez Said, Chief Executive Officer, Public Interest Law Associates of Pakistan made a request dated 17.12.2019 to the Chairman, Federal Board of Revenue Islamabad for provision of information under the Right of Access to Information Act, 2017. The text of the application is reproduced as under:

*From the press news: <https://www.dawn.com/news/1520223>*

*“The £190 million settlement is the result of an investigation by the NCA into Malik Riaz Hussain, a Pakistani national, whose business is one of the biggest private sector employers in Pakistan, “read a statement by the agency,....*

*A statement, released from the office of Special Assistant to the Prime Minister on Accountability Shahzad Akbar, said that Britain had agreed to an “immediate repatriation” of the funds received after the settlement and hailed it as a “success story of close cooperation between the United Kingdom and Pakistan’s multiple law enforcement agencies and efforts made since last year’s Justice and Accountability Partnership created between the two countries”.*

*We hereby request as follows:*

- i. If an income tax recovery process has been started against Malik Riaz for the disclosed sum of 190 million pounds of undeclared wealth in the United Kingdom?*

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ii. *How and when, FBR plans to recover the income tax from Malik Riaz?*

2. The application was responded by the Secretary (DT-FATE) vide Letter No. 4(23)S(FOI-FATE)/2019/290078-R dated 26.12.2019 to the following effect:

*“I am directed to convey that your application has been examined by the Competent Authority and is of the view that the right to information under “Right of Access to Information Act, 2017”, is subject to regulation and reasonable restrictions imposed by law, whereas, the requisite information is exempt from disclosure under sub-section (2) of section 216 of Income Tax Ordinance, 2001, which states that:*

*“(2) Notwithstanding anything contained in the Qanun-e-Shahadat, 1984 (P.O. Order No. 10 of 1984), or any other law for the time being in force, no court or other authority shall be, save as provided in the Ordinance, entitled to require any public servant to produce before it any return, accounts, or documents contained in, or forming part of the records relating to any proceedings under this Ordinance, or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof”.*

*Moreover, section 7(g) of the Right of Access to Information Act, 2017 itself also exclude the record relating to the personal privacy of any individual. Since the requisite information is considered to be confidential therefore, the same cannot be disclosed.”*

3. The appellant has impugned the reply in appeal under section 17 of the Right of Access to Information Act, 2017 before the Pakistan Commission on access to information.
4. Later on the appellant has supplemented the appeal in aid with the clipping from the newspaper “Dawn” dated December 03, 2019 with the following heading:

*“The National Crime Agency (NCA) of the United Kingdom has agreed to a settlement worth £ 190 million with the family of property tycoon Malik Riaz.”*

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5. During the hearings scheduled before the Commission Mr. Mohammad Alam Zaib Khan, the public information officer has been appearing to represent the organization. The respondent organization has submitted replies dated 31.1.2020, 10.3.2020, 1.9.2020 and 9.10.2020. It was informed that the matter has been referred to the Ministry of Law and Justice for clarification which is awaited.

6. The member (FATE) vide letter dated 1.9.2020 submitted the reply as under:

*“The requested information is exempt from disclosure and in this regard submissions are delineated below:*

(i) ***Section 3** of the Income Tax Ordinance, 2001 clearly states that provisions of the said ordinance shall have overriding effect on other laws.*

(ii) ***Section 216(2)** of the Income Tax Ordinance, 2001 specifically prohibits disclosure of any return, accounts or documents contained in or forming a part of the record relating to any proceedings under the Ordinance. Any violation of section 216 of the Income Tax Ordinance, 2001 attracts the penal provisions of section 198 of the Act which states that any disclosure made in violation of section 216 is an offence punishable on conviction with a fine of not less than Rs. 500,000 or imprisonment for a term not exceeding one year or both.*

(iii) ***Section 16(1)(b)(i)** of the Right of Access to Information Act, 2017 provides that information will be exempt from disclosure if it is likely to result in the commission of an offence. In the instant case since violation of section 216 of the ordinance, 2001 is a punishable offence under section 198 of the said ordinance, hence exemption given in section 16(1)(b)(i) of the Access to Information Act is clearly attracted.*

(iv) ***Article 19A** of the Constitution provides the right to Access to Information subject to regulation and reasonable restrictions imposed by law and therefore this right is not unqualified or without any restriction.”*

7. The Ministry of Foreign Affairs was also called in the matter with the direction to apprise the Commission specifically as to whether disclosure of the requested information would entail any adverse consequences in the interest of Pakistan in the conduct of international / bilateral relations with

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United Kingdom. The spokesperson of the Ministry of Foreign Affairs vide letter dated 17 January, 2022 informed the Commission that the disclosure of the requested information does not have any adverse consequences

against the interest of Pakistan. The text of the letter is reproduced hereunder:

*“Reference Pakistan Information (PIC) letter dated 01 September, 2021 on the above subject.*

*The Information Commission has specifically enquired whether disclosure of the requested information by the Commission would entail adverse consequences for the interests of Pakistan in the conduct of international / bilateral relations with UK.*

*In response, it is submitted that the information requested by the applicant does not have any adverse consequences for the interests of Pakistan.”*

### **C. COMMISSION’S VIEW.**

8. The appellant in his request has questioned the FBR authorities, whether the income tax recovery process has been initiated against Malik Riaz Hussain for the disclosed sum of £190 million of undeclared wealth in the United Kingdom, if not than how and when FBR plans to recover the same. The request is devised from the clipping of newspaper ‘DAWN’ dated December 03, 2019 which unveiled that Assets Recovery Unit confirmed that as a result of investigation by the National Crime Agency of the United Kingdom Malik Riaz Hussain has agreed to a settlement of amount worth £190 million. The clipping also linked it to the statement released from the office of Special Assistant to the Prime Minister on accountability Mr. Shahzad Akbar that Britain had agreed to an immediate repatriation of the funds received after settlement and hailed it as a success story of close cooperation between the United Kingdom and Pakistan law enforcement agencies and efforts made by Justice and Accountability partnership created between the two countries.
9. The FBR has claimed exemption from disclosure while referring section 216(2) of the Income Tax Ordinance, 2001 and sections 7(g)& 16(1)(b)(i) of the Right of Access to Information Act, 2017.
10. Realizing the sensitivity of the matter, this Commission also sought opinion of the Ministry of Foreign Affairs. The spokesperson of the Ministry submitted before the Commission that the disclosure of the requested

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information will not have any adverse consequences against the interest of Pakistan with regard to the conduct of international / bilateral relations with UK.

11. The appellant has asked the information pertaining to the income tax on the undeclared wealth held by Malik Riaz Hussain in the United Kingdom. It is admitted by the representative of the Government of Pakistan that the said amount was unearthed because of the initiative of Assets Recovery Unit with the help of National Crime Agency of UK. The requested information cannot be exempted from disclosure on any of the grounds mentioned in Section 16(j) of the Right of Access to Information Act, 2017 pertaining to the disclosure or otherwise of information related to a crime. Exclusion claimed by the respondent public body on the score of personal privacy of an individual does not rescue the organization from disclosing the requested information. In fact, as it is a reported case of undeclared wealth, the disclosure of the requested information will shed light on the steps taken by the FBR regarding the recovery of Income tax on sum of £190 million undeclared wealth which is a matter of public importance. In any case, the disclosure of requested information is not likely to invade the personal privacy of an identifiable individual in the instant appeal.

Section 216(2) of the Income Tax Ordinance, 2001 referred by the FBR in its reply has nothing whatsoever to do with the production of any return, accounts or documents contained in, or forming part of the record relating to any proceedings under the Ordinance, or any record of the Income Tax Department, or to give evidence. In any case, the Right of Access to Information Act, 2017 takes precedence over Income Tax Ordinance, 2001 with regard to the disclosure or otherwise of information.

12. The appellant has desired information regarding the steps taken by the FBR towards the recovery of income tax against Malik Riaz Hussain for the disclosed sum of £190 million of undeclared wealth in the United Kingdom, if not then how and when FBR plans to recover the same. The reply of the FBR therefore is not proper and appropriate. This Commission fails to understand as to how disclosure of the requested information about steps taken to recover income tax on undeclared wealth will result in the commission of crime, as claimed by the respondent.

13. It should be noted that the provisos (6B) & (6C) to section 216 of the Income Tax Ordinance, 2001 are also relevant in the instant appeal and are reproduced hereunder:

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*“(6B). Nothing contained in sub-section (1) shall prevent the Board from publishing the names of offshore evaders, in the print and electronic media who have evaded offshore tax equal to or exceeding rupees two and half million Rupees.*

*(6C). Nothing contained in sub-section (1) shall prevent the Board from publishing the names of offshore tax enablers, in the print and electronic media who have enabled offshore tax evasion.”*

As the sum involved in the instant appeal exceeds the limit of two and half million Rupees, the FBR was legally bound to have published names of the tax invaders and enablers in the matter in hand. As such, shrouding in the cloak of secrecy information about the steps taken to recover income tax on proven undeclared wealth will erode public trust in FBR rather than serving any public interest.

#### **D. ORDER**

14. The appeal is allowed. The Secretary (DT-FATE) / Designated Officer, Federal Board of Revenue is directed to provide the appellant information as to whether the income tax recovery process has been initiated against Malik Riaz Hussain for the disclosed sum of £190 million of undeclared wealth in the United Kingdom, if not than how and when FBR plans to recover the same.

He is required to comply with the order', forthwith but in any case not later than seven days of the receipt of this order.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner

Announced on 7.2.2022

Certified that this order consists of six pages, each page has been read and signed.