



In the Pakistan Information Commission, Islamabad

Appeal No 984-04/21

Waheed Shahzad Butt

(Appellant)

Vs.

Federal Board of Revenue

(Respondent)

ORDER

Date: May 18, 2022

Zahid Abdullah: Information Commissioner

A. Appeal:

1. The Appellant filed Appeal on April 07, 2021 to the Commission, stating that he had submitted information requests to Chairman, Federal Board of Revenue, on March 05, 2018 under the Right of Access to Information Act 2017.
2. The information sought by the Appellant is as follows:
 1. *“Introduction of any tax amnesty scheme for tax evaders is nothing but height of immorality fully sponsored by State. The Government instead of entertaining any such scheme should seriously consider introducing ASSET-SEIZURE SCHEME to confiscate undeclared/untaxed assets/wealth created from black/undisclosed untaxed money and make laws to bring back looted money from tax cheaters. There cannot be two opinions that tax amnesty and black money whitening schemes constitute acts of betrayal cheating the honest and loyal taxpayers and deceiving the exchequer technically. This may be classified as SRO mafia bypassing the fiscal law enacted by the Parliament.*
 2. *Tackling twin menace of black money and tax evasion has always been a failure of Pakistan's taxation system. Instead of dealing with these issues with an IRON HAND, Government has been pardoning the corrupt and appeasing tax evaders through various amnesty schemes. The result is obvious this is the time for the Government to decide that it should not allow such notorious AMNESTY SCHEMES which are against legal ethics and good governance, Government should find out, how this black money got generated in the first place when there are so MANY REVENUE (FBR) EMPLOYEES getting their salaries out of tax collected from PUBLIC MONEY. Anyone can easily find out unaccounted money by just looking at the markets, educational institutions, private hospitals, hotels and businesses etc. Government should remove all subsidies/exemptions which could be potentially allowing generate black money as well. Announcing Tax Amnesty Schemes time and again is nothing but showing helplessness of FBR in tackling black money. Those peoples, hooked on il-gollen wealth/income for the last many years know for certain that every now and then, there will be an AMNESTY SCHEME giving them a chance to get their income/assets whitened by paying far less the amount than what they are required to pay under the normal tax regime*
 3. *In our beloved homeland Pakistan, one never hears of sending tax evaders to the prison for their illegal acts. This confirms extreme stackness on the part I tax administrators or their connivance with tax dodgers. Instead, punishment of tax evaders is restricted to*

nominal fines or penalties encouraging them to remain in the fold of the underground economy, which is constantly expanding every day Literally there is another financial "National Reconciliation Ordinance under the umbrella of Tax Incentive Package earlier announced by the Government through Notification S.R.O 1065(1)/2013 dated 20-12-2013 Introducing Amnesty Scheme for lax dodgers by inserting Clause 86 in Part IV of Second Schedule to the Income Tax Ordinance, 2001, which is simply nothing but one step forward and two steps back. Another clean chit to break the net for the untaxed and under-taxed businesses/persons and severe violation of Constitution of Islamic Republic of Pakistan, 1973

4. *The state of affairs bluntly speaks the truth that in Pakistan there is no tax collection system but only a "TAX SHARING" exists in which the National Exchequer is never major beneficiary Major benefits are shared by tax collectors and tax evaders, which is called a marriage of convenience.*
5. *Notification SRO 1065(1) / 2013 dated 20-12-2013 introducing Amnesty Scheme for tax dodgers by serring clause 86 in Part IV of Second Schedule to the Income Tax Ordinance, 2001 is patently legal and unconstitutional being ultra vires, discriminatory and based on mala fides. Quite surprisingly clarification on the issue circulated by the FBR vide C. No. 4(67)S(ITPV/2015/113604 dated 03.12.2015 Issued under the signature of learned Secretary-IR Income Tax Policy, is an eye opener...!!!*
6. *It is worthwhile to point out here that any action to provide an illegal benefit in any taxation matter is Corruption and Corrupt practice under NAB Ordinance 1999. This view point has also been confirmed by the Hon'ble Supreme Court of Pakistan in 2014 SCMR 565 and 2012 SCMR 1757. In the name of rule of law and to unmask the conspiracy in the light of orders passed by the Hon'ble Apex Court and High Courts of Pakistan in PLD 2012 SC 292, PLD 2008 Karachi 68, 2012 PLC (CS) 566, 2016 LHC 61-[(2016) 113 Tax 160 (\ C.Lah)=2016 PLD 872] kindly provide following information/documents in terms of rights provided to the Citizens of this Country by the Constitution of Pakistan under Article 19A:*

File filed formation (s):

LTU / CRTO/ RTO

Number of Taxpayer availed Clause 86:

Individual _____ AOP (s) _____ Companies

Amount introduced under Clause 86:

Individual _____ AOP(s) _____ Companies

--At present more than two (2) dozens RTO(s), CRTO(s) & LTU are working/ operational across Pakistan headed by Chief Commissioners Inland Revenue, which includes:

<i>LTC, Islamabad</i>	<i>LTU, Lahore</i>	<i>LTU I+II, Karachi</i>
<i>RTO, Islamabad</i>	<i>CRTO, RTO, Lahore</i>	<i>CRTO + RTO, Karachi</i>
<i>RTO, Rawalpindi</i>	<i>RTO, Sahiwal</i>	<i>RTO-II, Karachi</i>
<i>RTO, Peshawar</i>	<i>RTO, Sailkot</i>	<i>RTO-III, Karachi</i>
<i>RTO, Abbotabad</i>	<i>RTO, Gujranwala</i>	<i>RTO, Hyderabad</i>
<i>RTO, Faisalabad</i>	<i>RTO, Multan</i>	<i>RTO, Sukkur</i>
<i>RTO, Sargodha</i>	<i>RTO, Bahawalpur</i>	<i>RTO, Quetta</i>

In the light of above humble submission, it is most respectfully prayed that the required information/documents may kindly be provided at earliest to unmask the systematic severe mal administration of justice because a system is corrupt when it is strictly profit-driven, not driven to serve the best interests of its people”.

B. Proceedings

3. **Through a letter dated May 20, 2021, the Respondent, FBR submitted its response which is as under:**

1. *"In this regard, I am directed to say that perusal of the appended application revealed that the applicant vide application dated 02-04-2021 requested the department for information related to beneficiaries of Amnesty Scheme introduced through SRO 1065(I) 2013 dated 20-12-2013 whereby reportedly the department vide letter dated 28-05-2018 rejected the request of the applicant due to prohibition under section 216 of the Ordinance, 2021.*
2. *It is imperative to mention that the applicant is referring to letter and application backdated May 2018, whereas section 17 of Right of Access to Information Act, 2017 provides that, "An applicant who is not satisfied by the decision of the designated official or where no decision has been communicated to him within the time fixed for such decision. He may within a period not exceeding thirty days after either receiving a decision or after the time-limit for such a decision has passed, prefer an appeal to the Information Commissioner".*
3. *In view of the aforesaid legal position I am further directed to request the Hon'ble Pakistan Information Commission to dismiss the instant appeal being time barred".*
4. Through a letter dated June 10, 2021, the Appellant submitted response which is as under:
"Please refer to subject cited supra and further to letter issued by your good honor wherein response/inform shared by the FBR vide their letter C.NO.4 (50) S(FOI-FATE)/2021/63075-R dated 19.05.2021 has been communicated for our comments.
 1. *Quite amazingly it appears learned public office holder representing Revenue Division of Pakistan is Unaware of the binding verdicts and law on the issue.*
 2. *It is requested to kindly issue instructions to the learned tax employee "As defined under Section 2(10) of the Federal Tax Ombudsman Ordinance, 2000) to kindly read paragraphs 26, 28, 29, 30, and 31 of the appeal wherein time consume during the period 02.05.2018 to 05.04.2021 has been explained (which will ultimately unmask the real face of FBR functionaries to defend the tax looters /Cheaters).*
 3. *FBR tax employee is also unaware of the binding verdicts of higher/superior judiciary on the issue, therefore, it is requested to ask them to read/examine the binding verdicts discussed under paragraphs 25,35,36,37. And 39 of the appeal.*
In view of the circumstance narrated supra, it is most respectfully humbly prayed that the hon'ble forum of Pakistan information Commission may be pleased to accept /entertain intent appeal in the light of crucial facts and ambient circumstance in the appeal, to graciously declare that the letter dated 28.05.2018 issued by Respondent is patently illegal, without lawful authority incompetent and of no legal effect and consequence; to kindly direct the Respondent to provide the information as requested by the Appellant under his Constitution of Pakistan, 1973".
5. In the hearing held on November 17, 2021, this Commission asked the Respondent "Whether or not Amnesty Scheme issued through SRO 1065/1/2013, dated December 20, 2013 in the instant appeal has been given protection under an Act of Parliament?".
6. The response of the Respondent was shared with the Appellant who submitted his rejoinder on December 08, 2021 which is as under:
"2 .That the response from FBR received through Hon'ble Pakistan Information Commission in cited Appeal is solely based on timely intervention by the august forum of Pakistan information Commission, however, the vital information has intentionally been stopped under the weak umbrella of Section 216 of the Income Tax Ordinance, 2001, solely to provide unholy benefits to the National Tax Robbers/Criminals of Pakistan, practically involved in destabilizing the homeland Pakistan to exploit the deteriorated taxation system of Pakistan. It proves that nobody at FBR is even interested to read examine the contents of the request whereby certain information has been requested from Lords sitting at FBR HQ Islamabad, therefore, it is need of the hour that FBR Lords must read the crux of the matter at least ten (10) times in front of Hon'ble Pakistan

Information Commission, which is quite unambiguous and transparent (having nothing to do with Personal privacy of taxpayers)

A) FBR field formation(s):

LTU / CRTO / RTO.....

MB) Number of taxpayer availed Clause 86:

Individuals _____ AOP(s) _____ Companies

Amount Introduced Under Clause 86:

Individual _____ AOP(s) _____ companies

3 The taxpayer citizens of Pakistan honestly and sincerely believe that the Hon ble office of Prime Minister of Pakistan is committed to eradicate corruption across the Country (including in FBR) by using all its resources Menace of corruption leads to injustice, lawlessness and creates a sense of insecurity hopelessness and despondency. As per law FBR functionaries working under the command and control of the Revenue Division of Pakistan are public servants in the light of Section 21 of the Pakistan Penal Code. 1860 This is to point out that any action to provide an illegal benefit in any taxation matter is Corruption and Comupt practice under Section 9 (vi) of NAB Ordinance 1999 The viewpoint has also been confirmed by the Hon'ble Supreme Court of Pakistan 2014 SCMR 585-Supreme Court of Pakistan

S 9(a) (vi) ----corruption and corrupt practices Common intention/abetment by public Section 9(a)(vi) of National Accountability Ordinance, 1999 covered crimes committed with common intention as well as abetment-Pubic servants who abetted the commission of cooption by allowing servant-Scope acts which it was their duty to stop should be proceeded against under S 9(a)(v) of National Accountability Ordinance 1999

2012 SCMR 1757-Supreme Court of Pakistan In the light of the above we are disposing of the grounds on the basis of which leave to appeal was granted in the following manner.

- i. We find the appellant guilty of misconduct for his role in a transaction which may be considered private but was executed with a mala fide intention to defraud a person and therefore was unbecoming of a Judicial Officer
- ii. It is prima facie clear that the appellant had been misusing his judicial office to help and assist his brothers and nephews in acquiring or disposing of properties profits and gains of which were shared by him and this tantamount to abuse of judicial powers

“that it was prima face clear that Judicial Officer had been misusing his Judicial Office to help and assist his brothers and nephews in acquiring or disposing of properties profits and gains of which were shared by him which tantamount to abuse of judicial powers-Appeal was dismissed, in circumstances

4. Article 19-A of the Constitution of the Islamic Republic of Pakistan, 1973 enabled every Citizen of Pakistan to become independent of the power center to seek information on matters of public importance Corruption in Pakistan is widespread, particularly in the Government Transparency Internationals 2017 Corruption Perception Index ranks the country 117 place out of 180 countries Pakistan saw a significant improvement in its statistics in 2013 when its ranking improved by 12 indices compared to its previous rankings 139 out of 174 in 2012, 134 out of 182 in 2011, 143 out of 178 in 2010, and 139 out of 180 in 2009 Fortunately, viewpoint of higher/superior judiciary regarding transparency and accountability is unambiguous, reliance is placed on some crucial judgments

2018 PLD 198: The people of Pakistan have a right to know every public act everything that is done in public By their public functionaries and chosen representatives People are entitled to know the particulars of every public transaction acquire information in all matters of public importance and to disseminate

The above case law from Pakistan India and other international jurisdiction, leaves no manner of doubt that citizens right to know the facts the true facts about the administration of the country in all matters of public importance is one of the most fundamental pillars of democratic state A popular government without popular information of the means of obtaining i but a prologue to a farce or tragedy or perhaps both

This Court in Waheed Shahzad Butt vs Federation of Pakistan and others (PLD 2015 Lah. 877) held that duty of Rubilic body to disclose and provide information recont is this displaced by exclusions only public interest in disclosing information record sought is outweigh by robic interest in maintaining excisions. 2013 SCMR 1880

Present Jawwad S Khawaja Khilj Anf Hussan and Ejaz Atzal Khan The accountability of governments and those who hold high office in government inius gasents the very foundation for the levy and legitimacy of taxes et

Article 19A of the Constitution states in very clear feims that every ofizin shall have the opt£ in. Dave access to information in all matters of public importance subject to equation and reasonable restrictions imposed by The no contention between the parties that information relating to money spent from the public exchequer is a matter of public importance

5. Without prejudice to above and even otherwise, quite surprisingly FBR sought help from Section 216 of to infringe the Income Tax Ordinance, 2001 to contend that the record (particulars/names) of National Tax Robbers pertains to personal privacy of the individual. On a plain reading of Section 216 ibid, this humble appellant does not find the interpretation placed on it by the learned functionaries representing FBR to be valid Appellant not asking to disclose any personal data particulars of National Tax Robbers as to any personal privacy Even otherwise the disclosure of names of persons involved in National Tax Robbery to avail Zero Percent secret Tax Amnesty Scheme maneuvered by former Prime Minister Nawaz Sharif, can by no stretch be termed as a private record, especially when there is a strong allegation of extreme corruption and corrupt practices in Public Office Holders and FBR to provide unholy benefits to friends and family to cheat National Exchequer. Under the highly controversial circumstances (Panama Leaks/ Pandora Leaks-Assets beyond means etc), information (name/particulars) of National Tax Robbers cannot be allowed to be shrouded in mystery. Accordingly, the general public has an interest and a night to know about the same.

6. The principles propounded in the above judgments very much undertie the objects for which the Right of Access to Information Act, 2017 was promulgated. The application by the appellant was not responded to by the FBR contrary to the command of the law which prompted the undersigned to approach the Hon ble Forum of Pakistan Information Commission. The FBR instead of fully complying with the unambiguous provisos of law adopted another novel stance of personal privacy of National Tax Robbers. The very purpose for which the Right of Access to Information Act, 2017 was promulgated was thus defeated by the FBR and its Chairman and that too without application of mind and, it appears, for improper motives to provide an untouched shield to National Criminals/National Tax Robbers, involved to destabilize Pakistan's taxation system. the name of rule of law and to unmask the biggest conspiracy it is need of the hour that strict direction may be-sued to FRB to immediately public the vital data to unmask the dirty faces of National Tax Robbers”.

7. Through an E-mail dated January 27, 2022, the Appellant also shared the following:

“BEFORE HON’BLE CHIEF INFORMATION COMMISSIONER, PAKISTAN INFORMATION COMMISSION

APPEAL NO. 984-04/2021

THE BIGGEST FINANCIAL SCAM IN THE HISTORY OF PAKISTAN

ZERO PERCENT TAX AMNESTY SCHEME UNDER THE GARB OF S.R.O

Most Respectfully Sheweth:

1. It is humbly stated that right after the disposal of petition by the Hon'ble Lahore High Court in **W.P. No.207571/2018** (Waheed Shahzad Butt Vs Chairman FBR Etc), the appellant approached this Hon'ble Forum of "PIC". As per record instant, WP was finally disposed of by the LHC vide order dated **30.03.2021**, issued on 05.04.2021 with the following categorical observation/directions:

"This constitutional petition merely seeks a direction to the respondent No. 1, the Chairman Federal Board of Revenue, Islamabad to respond to the application which is placed as Annexure "C" with this petition. That application is a request under Article 19A of the Constitution of the Islamic Republic of Pakistan, 1973 for providing information regarding untaxed/black money in the light of clause 86 of Second Schedule to the Income Tax Ordinance, 2001 issued vide notification SRO 1065(I)/2013.

.....
.....

It has been informed by the learned Asst Attorney General that the Commission is not complete to which the petitioner may apply. Moreover, the prayer of the petitioner has already been granted, in that, the respondents have responded to the application of the petitioner by issuance of a letter dated 28.5.2018. That letter has not been challenged by the petitioner which may be done by bringing appropriate proceedings. With these observations, this petition is disposed of".

2. Without prejudice to the above and even otherwise, the vital information has intentionally been stopped under the weak umbrella of Section 216 of the Income Tax Ordinance, 2001, solely to provide unholy benefits to the National Tax Robbers/Criminals of Pakistan, practically involved in destabilizing the homeland Pakistan to exploit the deteriorated taxation system of Pakistan. It proves that nobody at FBR is even interested to read/examining the contents of the request whereby certain information has been requested from Lords sitting at FBR HQ Islamabad. Quite surprisingly FBR sought help from Section 216 of the Income Tax Ordinance, 2001 to contend that the record (particulars/names) of National Tax Robbers pertains to the personal privacy of the individual. On a plain reading of Section 216 *ibid.*, this humble appellant does not find the interpretation placed on it by the learned functionaries representing FBR to be valid. Appellant is not asking to disclose any personal data/particulars of National Tax Robbers so that to infringe any personal privacy. Even otherwise the disclosure of names of persons involved in National Tax Robbery to avail Zero Percent secret Tax Amnesty Scheme manoeuvred by former Prime Minister Nawaz Sharif, can by no stretch be termed as a private record, especially when there is a strong allegation of extreme corruption and corrupt practices in Public Office Holders and FBR to provide unholy benefits to friends and family to cheat National Exchequer. Under the highly controversial circumstances (Panama Leaks/ Pandora Leaks - Assets beyond means etc), information (name/particulars) of National Tax Robbers cannot be allowed to be shrouded in mystery. Accordingly, the general public has an interest and a right to know about the same.

3. It is worthwhile to highlight here that solely due to untiring efforts made by Hon'ble "PIC", present government has decided to remove restrictions on the FBR from not disclosing information of the politically-exposed persons including high-level public officials under the Finance (Supplementary) Act, 2022 (Evidence attached). Through the new law, the FBR has been empowered to disclose information of politically-exposed persons. The amendment has been propped whereby the particulars of high-level public officials and public servants in BPS-17 and above, their spouses, their children, or Benamidars, shall not be precluded from disclosure by Section 216(1) of the Income Tax Ordinance, 2001.

4. Section 216 of the ITO, 2001 governs the disclosure of information by a public servant. Section 216(3) provides for situations where the disclosure of particulars cannot be precluded by Section 216(1), new law has changed the situation dramatically, whereby, the particulars of high-level public officials and public servants in BPS-17 and above, their spouses, their children or Benamidars, or any person in relation to whom the

aforementioned persons are beneficial owners, shall not be precluded from disclosure by Section 216(1).

In the name of rule of law and to unmask the biggest conspiracy it is need of the hour that strict direction may be issued to FRB to immediately public the vital data to unmask the dirty faces of National Tax Robbers”.

C. Discussion and Commission’s View on Relevant Issues:

8. This commission holds that the plea of the Respondent that the instant Appeal be dismissed on the ground of being time-barred does not hold water. The record on the file demonstrates that WP of the Appellant was disposed of by the LHC vide order dated 30.03.2021, issued on 05.04.2021 with the direction to the Chairman, FBR *to respond to his application.*
9. This commission is not mandated to settle issues of morality of the tax amnesty schemes, as raised by the Appellant but with the legality of the disclosure of information pertaining to the total number of individuals/companies and the total amount declared under SRO 2013 in different formations of the Respondent, FBR.
10. Under Section 4 of the Voluntary Declaration of Domestic Assets Ordinance, 2018, the provisions of the Ordinance are to apply to: (a) every company, association of persons and all citizens of Pakistan wherever they may be, except holders of public office, their spouses and dependent children; and (b) undisclosed income and domestic assets held by the persons first mentioned in clause (a) in Pakistan, except where proceedings are pending in any court of law in respect of the domestic assets.
11. Section 11 of the 2018 Ordinance contains a confidentiality provision, framed in the following terms: “(1) Notwithstanding the provisions of subsection (3) of section 216 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Right of Access to Information Act 2017 (XXXIV of 2017) and any other law for the time being in force, particulars of any person making a declaration under this Ordinance or any information received in any declaration made under this Ordinance shall be confidential. (2) A person who discloses any particulars in contravention of subsection (1) shall commit an offence punishable on conviction with a fine of not less than five hundred thousand Rupees, but not exceeding one million Rupees or imprisonment for a term not exceeding one year or with both.”
12. It needs to be understood that Section 11 of the 2018 Ordinance prohibits the disclosure of “particulars of any person making a declaration under this Ordinance or any information received in any declaration made under this Ordinance” which is not the case in the instant Appeal. In the instant Appeal, the Appellant has not sought amount declared by identifiable individuals through SRO of 2013 which is also exempted from disclosure under different clauses of Section 7 and Section 16 of the Right of Access to Information Act, 2017.
13. The Appellant has only sought information about the number of individuals and total amount declared through the amnesty schemes in different formation of the Respondent, FBR through amnesty scheme under the SRO of 2013.
14. This commission holds that the disclosure of requested information about total number of individuals/companies, total amount declared through different formation of FBR under SRO 2013 is not hit by any of the exemption clauses of the Right of Access to Information Act, 2017 as such disclosure will not reveal names of any identifiable individual and any company leading to actionable breach of confidence and invasion of privacy of identifiable individuals.

D Order

15. The appeal is allowed. The Public Information Officer, FBR is directed to share with the Appellant the requested information about total number of individuals/companies and total amount declared through different formation of FBR under *clause 86 of Second Schedule to*

the Income Tax Ordinance, 2001 issued vide notification SRO 1065(I)/2013 within 7 working days of the receipt of this Order, with intimation to this office.

16. Copies of this Order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on: May 18, 2022

This order consists of 8 (eight) pages, each page has been read and signed.