

FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Lahore

Complaint No.51/LHR/IT(41)/103/2012

Dated: 23.01.2012

Shahid Pervez Jami
36 FCC Gulberg-IV
Lahore

... Complainant

Versus

The Secretary
Revenue Division
Islamabad

... Respondent

Dealing Officer	:	Muhammad Munir Qureshi, Advisor
Authorized Representative	:	Complainant in person
Departmental Representative	:	Imtiaz Ahmad, DCIR

FINDINGS/RECOMMENDATIONS

This complaint is against FBR's failure to publish yearly directory of taxpayers containing details of their income, assets, liabilities, expenses, taxes, etc.

2. Through sub-section (5) inserted in Section 150 of the repealed Income Tax Ordinance 1979 and Circular No.7 of 1981 the CBR was empowered to annually publish, with prior permission of the Federal Government, a directory containing taxpayers' details of income, assets, liabilities, taxes, etc. A directory was accordingly published in 1993 for the first and the only time. Although a provision parallel to sub section (5) of Section 150 was incorporated in the Income Tax Ordinance 2001 (Section 216(5)), FBR did not issue any directory after 1993. The Complainant sees non publication of taxpayers' directory as a serious lapse on the part of FBR, and a cause of serious maladministration.

3. When confronted, the Deptt filed a reply in which a preliminary objection was taken that the Hon'ble Federal Tax Ombudsman had no jurisdiction to take up the complaint as the Complainant was not personally aggrieved in any way by the non-publication of a taxpayers' directory. The Deptt further argued that only the superior judiciary had the right to take up 'pro bono publico' petitions. On merits, it was contended that under the law it was optional for the FBR to publish a taxpayers' directory. Moreover, the information being sought to be published being privileged, it was not in public interest to put such information in the public domain given the security situation presently prevailing in the country. Revealing sensitive details of taxpayers' income, assets, etc., might create problems for them.

4. According to the Complainant, an amendment in law was made as far back as 1981, expressly to facilitate regular publication of a taxpayers' directory. FBR was under a statutory obligation to implement the enactment. Its failure to do so was a serious lapse that was tantamount to maladministration. The *raison d'être* of FTO Ordinance being prevention and control of maladministration on the part of tax functionaries, the Hon'ble FTO was competent to investigate any relevant complaint relating to FBR. In fact he had exclusive jurisdiction to investigate complaints of tax maladministration. It was not at all necessary that someone should be 'personally' aggrieved by the maladministration which was of a generic nature. In a sense, every citizen of Pakistan gets hurt due to poor quality of tax administration. Even otherwise, the Hon'ble FTO has power under the FTO Ordinance to take *suo motu* notice of acts of omission and commission that fall within the ambit of maladministration. Indeed it is in public interest that FBR performs its functions efficiently and transparently. As for the Departmental

contention that the Hon'ble FTO is not a court or a tribunal, suffice it to say that the Supreme Court of Pakistan as well as the High Courts have held that the Ombudsman is invested with quasi judicial authority and is not to be seen as merely an administrative forum (**60TAX52, 1989PTD485, 1990PTCL755, DTPHC1659**). It is the statutory responsibility of the FTO to take every conceivable measure to meet the objectives of the FTO Ordinance. Also, as non implementation of FTO's Recommendations entails defiance inviting punitive action under Section 16 of the FTO Ordinance, the preliminary Departmental objections are found to be bereft of any objective or legal basis.

5. On merits, an amendment in Section 150 of the repealed Income Tax Ordinance 1979 was made through the Finance Ordinance 1981 by insertion of sub section (5) so as to add transparency to tax administration, and a taxpayers' directory was eventually published in 1993. A parallel provision was retained in successor legislation, i.e. the Income Tax Ordinance 2001. The argument that putting information about assets of taxpayers entails security risks doesn't hold water. In case of holders of public office, the same information is published by the Election Commission of Pakistan on a regular basis. Not only will publication of a taxpayers' directory have a salutary effect on tax compliance in the country, it will also assist in evolving a tax culture conducive to fairplay and democratic values.

6. After 18th Amendment, the right to information in all matters of public importance, under the newly added Article 19A, has become a Fundamental Right, and any restriction has to be strictly construed, only as a rare exception. Under Section 216(6) of Income Tax Ordinance 2001, nothing prevents the Federal Government from publishing particulars and the amount of tax paid by taxpayers who

are holders of public office, as defined in the National Accountability Ordinance 1999 (XVIII of 1999). Civil Society Organisations, including Transparency International Pakistan have been persistently demanding access to such information in public interest.

Findings:

7. Under Section 216(5) of Income Tax Ordinance 2001, FBR can publish a taxpayers' directory, with the prior approval of the Federal Government. Its publication on a regular basis being in furtherance of Article 19A of the Constitution shall certainly help reduce tax maladministration in Pakistan. Prior approval of the Government is, however, not required (Section 216(6)) for publication of particulars of taxpayers who are holders of public office.

Recommendations:

8. FBR to –
- (i) take steps to bring Section 216(5) of Income Tax Ordinance 2001 in conformity with the provisions of Article 19A of the Constitution;
 - (ii) send to the Federal Government particulars and the amount of tax paid by the holders of public office (as defined in Section 5(m) of National Accountability Ordinance 1999) for making this information public, to meet the obligatory requirements of Article 19A of the Constitution; and
 - (iii) report compliance within 30 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 28-12-2012
mmq/my