

OUT OF COURT SETTLEMENT NOT CONFIDENTIAL: PRESIDENT ENDORSES FTO VERDICT

The Business Recorder, Islamabad in its news item dated 20th October, 2014 has reported that the President of Pakistan has endorsed the verdict of Federal Tax Ombudsman (FTO) that the orders of the Alternative Dispute Resolution Committees (ADRCs) commonly known as "out-of-court settlement" on disputed tax related matters are not confidential under Freedom of Information Ordinance, 2002.

The newspaper reported that the President has confirmed the order passed by FTO wherein the former FTO Dr. Muhammad Shoaib Suddle has directed Chairman, Federal Board of Revenue (FBR) to provide "orders" passed by FBR on the recommendations of the ADRCs, under Freedom of Information Ordinance (FOI) as guaranteed by Article 19-A of the Constitution.

The President order states, "The subject Representation has been preferred by the Secretary, Revenue Division/Public Body (Agency) against the decision of the learned FTO, which was filed under Section 19(2) of the Freedom of Information Ordinance, 2002 (FOI) by Waheed Shahzad Butt of Tax Resolution Service Company (the requester) who challenged the decision of the said Public Body/Agency, which vide its decision dated 31 August, 2012 had refused to provide the information requested by the above requester by way of his initial request/application under Section 12 of the FOI dated August 9, 2012. Relevant portion of the initial application of the requester to Agency/Public Body is reproduced herein below for a ready reference:-

- (i) Recommendation issued by Alternative Dispute Resolution Committee u/s 134A of the Income Tax Ordinance, 2001.
- (ii) Orders passed by FBR on recommendation issued by Alternative Dispute Resolution Committee u/s 134A of the Income Tax Ordinance, 2001 (Either accepted or rejected).
- (iii) Orders passed by Chairman on recommendation issued by Alternative Dispute Resolution Committee u/s 134A of the Income Tax Ordinance, 2001.
- (iv) Recommendation issued by Alternative Dispute Resolution Committee u/s 47A of the Sales Tax Act, 1990.
- (v) Orders passed by FBR on recommendation issued by Alternative Dispute Resolution Committee u/s 47A of the Sales Tax Act, 1990 (Either accepted or rejected).
- (vi) Orders passed by Chairman on recommendation issued by Alternative Dispute Resolution Committee u/s 47A of the Sales Tax Act, 1990.

In the prescribed application form the requester has also specifically mentioned the purpose of acquisition of the information, which is to be presented/submitted before the court of law, accountability/Ombudsman forum. The learned FTO after hearing the parties has passed the impugned Intervention Order by allowing the complaint of the requester in the following manner:

"In order to ensure that the public's right to seek access to information, as guaranteed by Article 19-A of the Constitution and Section 3(1) of the FOI is not impaired, the FBR is ordered to provide the Requester with the requested information, in the format given by him, within 21 days from the date this order is received".

The President's order further added that in the subject Representation the Petitioner/Agency/Public Body has questioned the above decision of the learned FTO on various grounds. In the subject Representation the Agency while invoking various Sections of the FOI and above referred tax statutes, particularly Section 134-A of the Income Tax Ordinance, 2001 and Section 47-A of the Sales Tax Act, 1990 relating to Alternate Dispute Resolution (ADR) mechanism, where under the above referred Committees have been constituted, has vehemently urged that, inter alia, the Recommendations of these aforementioned Committees cannot be provided to the requester/complainant, as the same fall in the above mentioned exclusion category. On the other hand, complainant has also filed his reply to the subject Representation and while reiterating his earlier stance has pleaded that the subject Representation has been unauthorizedly filed and should be dismissed.

The FBR is ordered to provide the requester with the information but excluding there from the record of Recommendations of the said Committee, in the format given by him, within 21 days from the date of receipt of this order. Compliance now to be reported to the FTO's Secretariat within 30 days of receipt of copy of this order, the President order added.

The newspaper further reported that the former FTO Dr. Suddle issued first of its kind order pertaining to the ADRC, FBR and FOI on a complaint filed under Section 19 of the FOI. Access to information is a sine qua non of constitutional democracy. The public has a right to know how public functionaries do their job. The responsibility of public functionaries to disclose what they do and how they do works against both corruption and highhandedness. As a rule, information should be disclosed. Only as an exception, privilege could be claimed on justifiable grounds permissible under the law, sources referred to the FTO's earlier order.