

THE FEDERAL TAX OMBUDSMAN ISLAMABAD

M/S AGILENT FREIGHT SERVICES (PVT) LIMITED: 0129/OM/2021

Dated: 22.10.2021* HQ, Islamabad

MULTI MILLION DOLLAR TAX EVASION BY RESIDENT COMPANIES / CONCERNS / INTERNATIONAL CONTRACTORS-

The Secretary,
Revenue Division,
Islamabad.

The Chief Commissioner-IR,
Corporate Tax Office,
Lahore.

...Respondents

Dealing Officer
Appraisal by

: Mr. Muhammad Majid Qureshi, Advisor
: Mr. Muhammad Tanvir Akhtar, Advisor

FINDINGS/RECOMMENDATIONS

This Own Motion investigation was initiated in terms of Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), because FTO Secretariat has evidence-based information that some of the most meaningful and innovative initiatives of FBR's own officers and field formations stand diluted and washed away due to **follow up failure, frequent posting transfers of officers and massive changes of jurisdictions.**

2. Moreover, through In-House Analysis FTO Secretariat has also identified that though FBR and its dozens of field formations maintain an organized web portal, rich data center, exhaustive Data Bases, elaborate and comprehensive operational soft wares and houses a full-fledged & home-grown IT support system i.e., Pakistan Automation (PVT) LTD (PRAL), yet neither FBR HQs nor its any single field formation maintains;

- a. *any IT based **tracking system**, archiving various valuable initiatives & ventures made by different FBR's organizations, officers, teams or specially created cells from time to time.*

- b. *any exhaustive, fool proof and IT enabled **handing over module** (from predecessors to successors) for such initiatives.*
- c. *any institutionalized internal **follow up system**, or*
- d. *any internal evaluation mechanism to gauge whether the goals envisaged under FBR's flagship ventures have been logically pursued & achieved.*

Therefore, it was reasonably assumed that in most of the cases the good job done is wasted, diluted or compromised with the transfer of individuals, dissolution of units/ cells and take over by new managers.

3. While conducting the aforesaid In-House Analysis, FTO Secretariat has information on record that a list of potential cases of tax evasion, (including this case) along with detailed Investigation Report & Case Study was prepared & shared by Directorate General (DG), BTB FBR. This valuable information was duly shared in **December, 2018**, with the concerned field formations for taking action against said entities for not declaring true particulars of their receipts/income and not discharging their responsibilities as withholding agents. However, in 2019, FBR's management suddenly shelved this whole BTB regime overnight; disbanding BTB Zones Islamabad, Lahore and Karachi. Office of DG BTB was relegated to a ceremonial entity assigned as additional charge. Thus, in addition to losing an effective organization, the repository of the whole above data/information was suddenly rendered extinct.

4. Such a kneejerk attitude of FBR's reflects clear maladministration in terms of section 2(3) (ii) of FTO Ordinance, 2000 i.e.

- (ii) ***neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;***

5. FTO's in-house analysis was mainly based on investigation reports generated by DG BTB which clearly show that the above

concerns were not declaring the true particulars of Income and were not discharging their responsibilities as withholding agents, especially in respect of sections 149, 152 and 153. In order to make out foolproof cases, the total receipts of the said companies were obtained by DG BTB from the data hosted by international Aid Transparency Initiative, which was compared with the declared receipts in the tax returns. Huge discrepancies were observed casting doubt about tax evasion by the above companies. A detailed analysis was provided to the department discussing parameters and extent of tax evasion. However, after disbanding of the DG BTB office, progress on this case was not known. It seems that the valuable information shared with the field formations was lost due to inattention, incompetence and ineptitude of the officers holding jurisdiction of this case. The department was therefore, asked vide notices u/s 10(4) of the FTO Ordinance 2000 to file response to the above-mentioned observation and submit parawise comments.

6. The Chief Commission-IR, CTO Lahore vide his letter dated 07.12.2021 raised objection to the FTO's jurisdiction on the ground that FTO does not have jurisdiction to investigate the matters relating to assessment of income or determination of tax liability etc. in which legal remedies of appeal, review or revision were available. He further argued that preamble to FTO Ordinance dictates that FTO can investigate into matters wherein any injustice is done to a person through maladministration by functionaries administering tax laws. Suspected tax evasion does not fall in the definition of maladministration. Later on, Secretary (IR-Operations), vide his letter dated 11.03.2022 also raised objection to the jurisdiction of FTO to investigate into the case of suspected maladministration.

7. The aforementioned plea of the respondent is not tenable in view of the recent judgment of single bench of Hon'ble Islamabad

High Court dated 07.03.2022. In Writ Petition No. 2332/2021 titled as Abdul Waheed Khan & Others, the Hon'ble Judge in Chamber observed that FTO may initiate Own Motion proceedings upon information whether or not there is a complaint. The honorable judge in chambers observed as **"we need not determine, for the purpose of this petition, all circumstances in which jurisdiction can be assumed by the learned FTO of his own motion. But suffice it to say that there must exist a concrete allegation of maladministration whether or not there is a complaint"**.

Secondly in a fairly large number of the cases of **Sugar Mills** FTO's similar Own Motion investigations were challenged by FBR before honorable President of Pakistan, which stand rejected.

8. Thus, instead of safeguarding the interest of revenue by plugging loopholes in the tax declarations of instant cases, the concerned CCIR CTO Lahore chose to contest the own motion investigations on technical grounds. It is pertinent to mention here that out of 34 such cases in which notices were issued by FTO office, compliance has been made by CTO and RTO Islamabad in 27 cases. As per information provided by field offices, thus far a demand over Rs.660 million has been raised in six cases at CTO and RTO Islamabad. Objection to the jurisdiction raised by the CCIR concerned CTO Lahore in this case reflects an inherent contradiction in compliance patterns of FBR's field formations. On one hand in 27 similar cases wherein the information was provided the intervention of FTO's office has enabled the field formations in recovery of millions of rupees in revenue. On the other hand, CTO Lahore is adamant to protect the inattention, ineptitude and inefficiency of his officers. Non provision of information by CIR CTO Lahore is therefore blatantly against the interest of public exchequer and the core function of FBR.

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FINDINGS:

9. Negligence, inefficiency and ineptitude on the part of FBR officials in enforcing various provisions of law in this major revenue potential case is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

10. FBR to direct: -

- (i) Director General Internal Audit-IR to conduct inspection in the subject case to ensure that action is initiated & concluded as per information provided by FTO during instant investigations;
- (ii) Chief Commissioner CTO Lahore to identify the officers who are responsible for unwarranted delay and resultant loss of revenue; and
- (iii) report compliance within 90 days.


(Dr. Asif Mahmood Jah)
(Hilal-i-Imtiaz)(Sitara-i-Imtiaz)
Federal Tax Ombudsman

Dated: 25: 10: 2022

Approved for reporting

Certified to be True Copy

Registrar
FTO Secretariat
Islamabad