



TRANSPARENCY  
INTERNATIONAL-PAKISTAN

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26<sup>th</sup> January 2016

TL16/2601/12A

Mr. Ashtar Ausaf Ali,  
Special Assistant to the Prime Minister for Law and Justice,  
Ministry of Law and Justice,  
Islamabad.

REMINDER

Subject: Minimum Tax U/s 153(1)(b) of I.T Ordinance, 2001 – Allegation of Active Involvement of NAZIR AHMED JUDICIAL MEMBER Appellate Tribunal-IR, Lahore to facilitate Mr. Khalid Aziz Banth former Member Direct Tax - FBR). Co-partner in Billion rupees cheating with Exchequer - Request to take strict action under the Law.

Dear Sir

Attention is invited to the complaint forwarded vide letter # **TL15/2812/15A** dated December 28, 2015 (evidence attached).

No response to the complaint forwarded has been received, and the delay in taking action if the wrong has been done may result in more harm to the country.

Transparency International Pakistan believes that menace of corruption leads to injustice, lawlessness and creates a sense of insecurity, hopelessness and despondency.

It will not be out of place to mention that cited Member Tribunal prima-facia involved in providing huge financial benefits to his friends ultimately causing huge loss to the National Exchequer, through the forum of Appellate Tribunal Inland Revenue while he is working as “Public Servant” in one of the esteemed judicial organization of Pakistan. This is to point out that any action to provide an illegal benefit in any **taxation matter is Corruption and Corrupt practice** under Section 9 of NAB Ordinance 1999:

The Prime Minister of Pakistan through his SA for Law under his mandate and his commitment for **Zero tolerance for Corruption** is requested, to kindly take action against those who are found responsible for such illegal act to defeat the National Exchequer. It is therefore, humbly requested to kindly intervene in the name of rule of law.

Transparency International Pakistan is striving to have transparency in procedures and Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in Country.

Yours sincerely,



Sohail Muzaffar  
Chairman

Enclosures.

Copy for information to:

1. Registrar, Hon'ble Supreme Court of Pakistan, Islamabad.
2. Chairman, NAB, Islamabad.
3. Chairman, PMIC, Islamabad.



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28<sup>th</sup> December 2015

TL15/2812/15A

Mr. Ashtar Ausaf Ali,  
Special Assistant to the Prime Minister  
for Law and Justice,  
Ministry of Law and Justice,  
ISLAMABAD.

Subject: Minimum Tax U/s 153(1)(b) of I.T Ordinance, 2001 – Allegation of active Involvement of NAZIR AHMED JUDICIAL MEMBER Appellate Tribunal-IR, Lahore to facilitate Mr. Khalid Aziz Banth former Member Direct Tax – FBR, co-partner in Billion rupees cheating with Exchequer  
Request to take strict action under the Law:

Transparency International Pakistan has received a complaint on the minimum tax U/s 153(1)(b) of I.T Ordinance, 2001 – Allegation of active Involvement of NAZIR AHMED JUDICIAL MEMBER Appellate Tribunal-IR, Lahore to facilitate Mr. Khalid Aziz Banth former Member Direct Tax – FBR, co-partner in Billion rupees cheating with Exchequer.

The allegations on the rare specimen of injustice with Public Exchequer and corrupt practices is forwarded for strict lawful action against the culprits specially POHs:

1. Legislation earlier approved by Parliament vide Finance Act, 2009 and strongly re-affirmed vide Finance Act, 2015 to 8% levy "Minimum Tax" under Section 153(1)(b) of the Income Tax Ordinance, 2001 of Gross Receipts on ALL service providers (corporate and non-corporate) has attained finality and all doubts and clouds have been removed by the Govt. while passing Finance Act, 2015. This is to point out that Cellular companies whose annual revenue is reportedly over Rs 1,200 Billion, are submitting annual tax return of loss since last ten years, and thus are not paying any Income Tax.
2. In 2009 while drafting law by placing tax deducted u/s 153(1)(b) as Minimum Tax for all taxpayers including corporate taxpayers vide Finance Act, 2009, the intention of Parliament was unambiguous, but some corrupt elements brutally played with the National kitty and at first stance Circular No. 06 was issued in 2009 (managed by then Member (DT) Khalid Aziz Banth) and when the Suo-Moto proceedings were initiated by the FTO, a void SRO No. 1003(I)/2011 was issued in October 2011 by Mr. Shahid Husain Asad, former Member Policy FBR, solely to benefits corrupt elements, for personal gain .
3. Departmental officials who have connived in attempting to defeat the alternative Minimum Tax provision enacted by Parliament through the Finance Act 2009 by issuance of ill conceived Circular No 6 of 2009 (by Mr. Khalid Aziz Banth) and SRO 1003(I)/2011 (by Mr. Shahid Hussain Asad) need to be proceeded against under the law. They have shown gross





Contempt for Parliament and the law, have subverted and brought into disrepute the institution of the FBR and robbed the exchequer of desperately needed tax revenues. NAB has now started an Inquiry into these matters, as approved in NAB EBM dated 03.12.2015.

4. The matter in the whole scheme of cheating the National Exchequer under the garb of Circular/Clarification/SRO. C. No.577/2011 decided by the FTO in Waheed Shahzad Butt Vs Secretary Revenue Division (2012 PTD 554) and Secretary Revenue Division Vs Waheed Shahzad Butt (2013 PTD 2159) has attained finality.
5. During the pendency of the above referred departmental review (2013 PTD 2159) before the FTO the ATIR, Lahore heard and disposed of a departmental appeal against an appellate order passed by the CIR(Appeals) in Techlogix case ruling against the decision of the CIR(Appeals) that Min. Taxation u/s 153(1)(b) of the Ordinance applied to all categories of service providers, corporate and non-corporate and that Circular 6 of 2009 was of no avail to corporate service providers in avoiding the Minimum Tax levy. An extraordinary feature of the above cited judgment dated 6.3.2013 rendered by the ATIR (NAZIR AHMAD J.M) is that the ATIR has reproduced verbatim much of the written deposition dated 24.9.2012 made by an FBR officer, Mr. KHALID AZIZ BANTH, before the FTO when he was summoned by the FTO in proceedings to dispose of Dept'l Review (2013 PTD 2159) and explain his role as the then Member (Direct Taxes) FBR in the issuance of Circular No. 6. It is patent that the ATIR Bench has not rendered judgment independently, in good faith in Techlogix case dated 06.03.2013. Rather the ATIR bench showed itself to be hand in glove with Mr Khalid Aziz Bant and sought to project and propagate the Dept'l viewpoint with regard to levy of Minimum taxation u/s 153(1)(b) that was completely at variance with the view taken by the FTO in 2012 PTD 554. This uncalled for nexus between ATIR Members and an FBR functionary who at that time had RETIRED from government service after reaching the age of superannuation shows mala-fide on the part of the ATIR Bench deciding the appeal and was calculated to disparage the high office of the FTO and bring it into disrepute. Mr Nazir Ahmad Judicial Member ATIR is also facing contempt proceedings from the office of FTO but still working as Judicial Member in ATIR where billion rupees of exchequer are on stake when sitting in any Division Bench of ATIR.
6. After managing and obtaining the order from co-accused (ATIR Members) two (2) Re-review petitions were preferred by FBR and former Member-DT FBR Mr. Khalid Aziz Bant (the official responsible for issuance of Circular 06/2009) but both were dismissed by the FTO.
7. ROLE of Former MEMBER FBR "official mainly responsible" for issuance of void circular is very important in the whole scheme of cheating the exchequer. An appellate order that replicates, WORD FOR WORD, a written deposition made by a former Member FBR/ATIR (Khalid Aziz Bant), before the FTO in a matter involving legality of FBR actions pertaining to taxation of Services Sector Corporate taxpayers after amendments introduced in Section 153 through Finance Act 2009, is not a speaking order and is proof positive that the ATIR Bench that decided the appeal was guided by considerations other than judicial! Verbatim reproduction of significant extracts from the statement made by former Member FBR can by no stretch of imagination be seen as a mere coincidence. It is indeed improbable that the choice of words, phrases, and complete sentences by the ATIR in the cited case was accidental. If that is true then it follows, as a logical corollary, that the order passed by the ATIR reflects the thinking of elements extraneous to the ATIR who have managed to



intervene perform in the work done by the Tribunal simply to pollute the process of justice and to rob the billions of rupee of National Exchequer in Minimum tax saga.

The complaint has been examined and in view of the aforesaid state of affairs, TI Pakistan has prima facies found the allegations as genuine, and request the SA to PM to take appropriate action as Mr. Nazir Ahmad J.M ATIR, Lahore has no lawful and moral justification to hold the judicial office. It is the duty of a Court/Tribunal to dispense justice and its presiding officers are supposed to uphold the dignity of law.

Transparency International Pakistan is striving to have transparency in procedures and Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in Country.

Regards,

Sohail Muzaffar  
Chairman

Enclosures.

Copy for information to:

1. Chairman, NAB, Islamabad.
2. Federal Tax Ombudsman, Islamabad.
3. Chairman, PMIC, Islamabad.
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