



TRANSPARENCY INTERNATIONAL-PAKISTAN

12th February, 2016

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Respected Mr. Mamnoon Husain,
Hon'ble President of Pakistan,
Aiwan-e-Saddar,
ISLAMABAD.

Sub: Complaint against sub-ordinate officers for entertaining representation of M/s Ismail Industries one of directors being Mr. Miftah Ismail, Chairman BOI against FTO's orders in the Review Petition No 86/2015 dated 29th January 2016.

Hon'ble President,

Transparency International Pakistan has received a serious complaint against sub-ordinate officers at the Presidency for entertaining representation of M/s Ismail Industries (one of directors being Mr. Miftah Ismail, Chairman BOI), against FTO's orders in the Review Petition No 86/2015 dated 29th January 2016.

This is to inform that the right of representation is available under section 32 of the FTO Ordinance only against the recommendations of the FTO, and **not against any order passed by him on review application.** Therefore, the present Representation is without lawful jurisdiction, having no effect in the eyes of law, merits, rejection. But it appears the basic legal issue has inadvertently been kept hidden by the officials at the Presidency who shall be made accountable.

According to FTO/Ombudsman laws, earlier orders passed by President and Hon'ble Lahore High Court, present representation is 'CORAM NON JUDICE'. The law is that no representation can be filed against the order passed by FTO in review, if there is no change in the original recommendation/order.

In orders passed by the President the same view point has been reaffirmed "No representation against order in review", kind attention of President is invited towards Case No. 603/FTO/2013 dated 04.09.2014 and Case No. 408/FTO/2013 dated 04.09.2014 (evidence attached). It is worthwhile to mention that the same view point has also been confirmed by the Honorable Division Bench of Lahore High Court in a case reported as 100 TAX 274 = 2009 PTD 955 (Lahore High Court)

Quote..."Establishment of Office of Federal Tax Ombudsman Ordinance, 2000 -- Section 32 --

Representation to President -- Performing of functions u/s 32 by President -- Scope -- Whether section 32 of Ordinance provides that aggrieved party, by recommendation of F.T.O. may, within 30 days of recommendation, make representation to President -- Who may pass such order thereon as he may deem fit -- Held yes --



President, while performing his function under Section 32 of the Establishment of Office of Federal Tax Ombudsman Ordinance, 2000, acts in quasi judicial and not in administrative capacity – Scope of such function of the President –

-- Representation under Section 32 of the Ordinance can be made against the recommendations and not against the order on review application -- Principles –
“...Unquote

FTO in the review petition No 86/2015, on 29th January 2016 has ordered the Federal Board of Revenue to check the Income Tax and Sales Tax status of M/s Ismail Industries under Section 176 of the Income Tax Ordinance 2001 and Section 38-B of the Sales Tax Act ,1990 for calling the information from M/s Ismail Industries, and that the the requisite information should be provided by the petitioner to the deptt who may then proceed further in accordance with law.

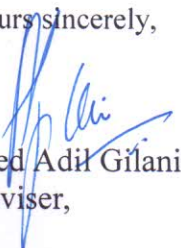
This is to point out that any action to provide an illegal benefit to any one, in any taxation matter is Corruption and Corrupt practice under Section 9 (vi) of NAB Ordinance 1999,

vi)[if he mis-uses his authority so as to gain any benefit or favour for himself or any other person, or [renders or attempts to render] [or willfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority]; (vii) if he has issued any directive, policy, or any SRO (Statutory Regulatory Order) or any other order which grants or [attempts to grant] any [undue] concession or benefit in any taxation matter or law or otherwise so as to benefit himself or any relative or associate or a benamidar [or any other person]”.

The President is therefore, humbly requested to kindly intervene in the name of rule of law and this unlawful representations filed may kindly be ordered to be de-listed immediately.

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,


Syed Adil Gilani
Adviser,

Copy forwarded for action under the rules regulations to:

1. Chairman, NAB, Islamabad.
2. Federal Tax Ombudsman, Islamabad.
3. Chairman, FBR, Islamabad,
4. Registrar, Supreme Court of Pakistan, Islamabad
5. Add. Commissioner, IR, Large Taxpayers Unit (LTU) Karachi