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Federal Tax Ombudsman Secretariat

No. 1/648/15-Impl.

December 18, 2015

P1-83K

Complaint No.53/ISD/IT(39)648/2015.

✓ To

The Secretary
Revenue Division
Islamabad

Subject: **IMPLEMENTATION OF FINDINGS/RECOMMENDATIONS.**

A copy of the Findings/Recommendations/Order of the Federal Tax Ombudsman dated 17-12-2015 in the complaint cited above is sent herewith for compliance.

2. Compliance report be submitted to the (I&M) Wing within the prescribed time mentioned in the Findings/Recommendations.

(Arshad Mahmood Cheema)

Registrar

Federal Tax Ombudsman Secretariat
Islamabad

A copy of the Findings/Decision/Order is forwarded for information to:

1. M/s Master Tiles & Ceramic Industries Limited and Three Others, Hafeeza Tufail Building, Attawa, G.T. Road, Gujranwala. (Ph: 055-4290378-83).
2. Mr. Waheed Shahzad Butt Advocate High Court Tax Resolution Service Company Republic Motor, 87-Shahrah-e-Quaid-e-Azam Lahore. (Cell: 0333-4417181)
3. The Chief Commissioner, (IR), Regional Tax Office, Gujranwala.
4. Sardar Irshad Shaheen, Advisor, Federal Tax Ombudsman Secretariat Islamabad.
5. Secretary to FTO.
6. Office Copy.

(Arshad Mahmood Cheema)

Registrar

Federal Tax Ombudsman Secretariat
Islamabad

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FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD

Complaint No.53/ISD/IT(39)/648/2015

Dated: 20-05-2015*

M/s Master Tiles & Ceramic Industries Ltd,
Hafeeza Tufail Building,
G.T. Road, Gujranwala. ... Complainant

Versus

Secretary
Revenue Division
Islamabad ... Respondent

Dealing Officer : Sardar Irshad Shaheen, Advisor
Authorized Representative : Mr. Hassan Kamran, Advocate
Departmental Representatives : Mr. Qaisar Ashfaq, Addl. Dir (I&I), FBR
Mr. Saqib Haroon, Advocate

ORDER

The Complainant, a private limited company dealing in manufacturing of Tiles/Ceramics, is aggrieved at alleged maladministration committed by the Respondent officials by resorting to defamation/vilification campaign of the Complainant and initiating proceedings which were allegedly out of jurisdiction.

2 The complaint was sent for comments to Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance 2000. In response, the FBR submitted its comments vide letter dated 08-06-2015.

3. Brief facts of the case are that the Additional Director, Intelligence and Investigation (I&I), Inland Revenue, Lahore received information about a 100 kanals Farm House in Bahria Town, Lahore

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owned by the three Directors of the Complainant company, purchased for Rs. 250 million. It was also found that three residential houses were built on this Farm by these Directors of the company at a cost of approx Rs. 423.60 million. The inquiry conducted by the concerned officers revealed that these properties were not declared in the wealth/reconciliation statements of the three Directors. During the inquiry proceedings, wealth statements were revised twice-first on 07.01.2015 and then on 01.03.2015 for tax years 2009 to 2015. The Dept'l officers claimed to have discovered substantial difference/discrepancies in the declared and revised wealth/reconciliation statements. While explaining the discrepancies it was claimed by the Directors that an amount of Rs. 230.3 million was gifted to the three Directors by two persons namely: Muhammad Khurram Taj and Muhammad Humayun Khan. They were not related to them and were alleged by the Respondents to be *benami* bank account holders of the company. It has also been alleged by the Directorate (I&I) that these two 'donors' were actually employees of the Company who had no independent financial means to run separate business of billions of rupees. The Dept'l officers issued notices to the Complainant company stating that sale transactions appearing in the alleged benami bank accounts of these two persons, amounting to over Rs. 10 billion, were actually undeclared/concealed sales of M/s Master Tiles & Ceramic Industries Ltd. The Complainant has alleged that Additional Director. (I&I) was not legally authorized to conduct such an inquiry and, therefore, his actions were unlawful and arbitrary. It has also been alleged that some information about tax matters of the Complainant was intentionally leaked to the press and electronic

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media portraying the company and its Directors as tax evaders, and such act amounted to defamation and vilification of the Complainant and its Directors, which required cognizance under the provisions of Section 2(3) of the FTO Ordinance 2000.

4. During the hearing, the AR vehemently argued that the negative information about tax matters of the Complainant company and its Directors was provided to the press and electronic media by the Respondent officials deliberately to defame them. He claimed that this was done to damage the Complainant's reputation and business who was real local manufacturer/competitor of vested interests (importers of tiles). The AR averred that the Complainant was already facing tough competition and such vilification campaign coupled with unlawful/arbitrary acts of the functionaries of FBR was adding to their problems. Citing some case laws he prayed that the Respondents be restrained from initiating any proceedings or conducting inquiry against the Complainant and its Directors and action be recommended against the concerned officers who were responsible for leaking the confidential inquiry report to the press which had caused harassment and mental torture to them.

5. The DRs claimed that Directorate General of Intelligence and Investigation (DG.I&I) has been established in accordance with the provisions of law/rules and it has been empowered to investigate any case of evasion of tax, fiscal fraud and revenue leakage of any person or class of persons, and for this purpose the officers of the Directorate have been empowered to issue notices and call for information while conducting inquiry in any case. These powers are

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exercised under Section 230 of the Income Tax Ordinance 2001 (the Ordinance), read with SRO.115(I)/2015, dated 09.02.2015. They pleaded that Hon'ble Supreme Court has not allowed Leave to Appeal in cases challenging the powers granted to the Directorate General (I&I) through SRO.115(I)/2015 dated 09.02.2015 and the Civil Petitions No. 2366, 2412, 2413, 2414, 2550 and 2551 of 2015 on the issue were dismissed as withdrawn by the apex court. They pleaded that investigation carried out by its officers and notices issued by them were not out of jurisdiction or unlawful. The DRs claimed that the information gathered through inquiry in the case of the Complainant revealed substantial evasion of tax by the Directors and sales worth billions of rupees were found undeclared in case of the company. They contended that even the invested amount could not be properly explained and an amount over Rs. 230 million was shown to have been received by the Directors as "Gift" from the two 'donors' who had no independent assets/status of their own and were actually the Complainant's employees residing in a three (03) marla house. The DRs contended that their returns for tax years 2009 to 2013 were managed to have been filed in RTO, Lahore with back dated entries. The investigation about filing of their returns in RTO, Lahore revealed that a DCIR, an Inspector and an UDC were found guilty of entering the back-dated returns of these 'donors' in RTO, Lahore just to prove that they were regular taxpayers. These officials were found guilty of tampering the record and committing fraud and they were suspended and now all the three officials have been dismissed. The DRs averred that the inquiry report of three officials was sent by DG (I&I) to the Chairman, FBR for taking disciplinary

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action against them as they misused their authority. The DG(I&I) filed affidavit with solemn affirmation that he never released/leaked or caused to be released/leaked in any manner to the press or media any information or material relating to the Complainant or its Directors. It was deposed that inquiry report was submitted to the Chairman, FBR for taking disciplinary action against the officials who were found guilty of collaborating with the taxpayers in filing back-dated returns in RTO, Lahore and consequently action has been taken against them by imposing major penalty of dismissal. The Respondents forcefully pleaded that they had no interest in leaking information about the Complainant to the press/media. They prayed that the complaint being devoid of any legal merit be dismissed.

6. The parties have been heard, oral and written arguments considered and record perused. The Complainant's contention that inquiry/investigation carried out by the Directorate of I&I and issuance of notices by them were out of jurisdiction, has not been found to be legally correct. This Directorate has been established under Section 230 of the Ordinance, and powers exercised by the officers of this Directorate have been vested through SRO No.115(I)/2015, dated 09.02.2015 issued by the FBR. Some taxpayer companies had challenged the jurisdiction and powers exercised by the officers of the DG(I&I), in Peshawar High Court but these Writ petitions were dismissed on 02.07.2015. The Civil Petitions No. 2366, 2412, 2413, 2414, 2550 and 2551 of 2015 were filed before the Hon'ble Supreme Court by three taxpayers. In the judgment issued by the three Members Bench, presided over by the Hon'ble Chief Justice of



Pakistan, Leave to Appeal was not granted and Civil Petitions on the issue were dismissed as withdrawn on 02.11.2015. The officers of Directorate of I&I were, therefore, legally justified to conduct inquiry and issue notices under the provisions of Section 230 of the Ordinance read with SRO No.115(I)/2015, dated 09.02.015.

At a later stage, the AR produced clippings of the press dated 17.05.2014 and 18.05.2014 reporting that previous SRO 351(I)/2014, dated 07.05.2014, issued earlier by FBR, had been suspended. However, no evidence was available in support of this claim and FBR authorities did not confirm suspension of this SRO.

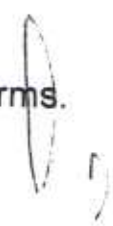
7. As regards leakage of information of the Complainant to the press and the Complainant's claim of defamation/vilification campaign by the FBR functionaries, the record shows that the DG(I&I) had sent a report to Chairman, FBR for taking disciplinary action against three officials of RTO, Lahore, who were allegedly found guilty of tampering the record for filing returns of income tax of the two 'donors' of the Complainant. The news items of suspension of these officials was published in national dailies 'The News' on 21.02.2015, 'Express Lahore' on 26.02.2015 and 'Jang Lahore' on 29.02.2015. In case the Complainant and its directors had felt that their honour/dignity was tarnished, they could have followed proper recourse by filing defamation suit in a court of law. No such action has been taken at the relevant/proper time. However, it needs to be probed as to who was responsible for leaking the confidential information with specific details of Complainants to the press. The DG (I&I) has solemnly declared on oath that he was not instrumental in getting the news

published against the Complainant. He has claimed that this information may have been leaked from the FBR. As a reputable company and its senior Directors have been harassed, by way of these press reports, the matter needs to be thoroughly probed. Chairman, FBR should get an inquiry conducted by a senior officer to identify the person(s) responsible for this leakage, and take strict disciplinary action against the officials(s) responsible. Report to this office be submitted within 45 days.

8. Over the last one year, there have been number of complaints, filed in this office, against excesses committed by I&I Directorate General while conducting inquires on some information about tax fraud/evasion. Chairman, FBR is advised to look into this aspect also and reconsider the unbridled powers given to Directorate General (I&I).

9. The complaint stands disposed of in above terms.

Dated: 14/11/2015



(Abdur Rauf Chaudhry)
Federal Tax Ombudsman

