

Chief Information Commissioner,
Pakistan Information Commission,
Information Service Academy, Zero Point, Islamabad.

Sub: **Appeal against FBR regarding refusal to furnish information**

I filed application under Right to Information Act, 2017 with Federal Board of Revenue [copy enclosed] which was rejected vide their letter dated December 26, 2019 [copy attached]. The basis of rejection are misconceived reliance on section 216 of the Income Tax Ordinance, 2001 and section 7(g) of the Right to Information Act, 2017. Hence, this appeal under section 17 of Right to Information Act, 2017 ["hereinafter the Act"] may kindly be considered/decided *inter alia* on the following grounds:

1. Federal Board of Revenue [FBR], other than merely invoking an exemption clause of the Act, and section 216 of the Income Tax Ordinance has not provided any arguments for withholding requested information that was not related to any particular tax record of a citizen but was in public interest as my fundamental right provided in Article 19A of the Constitution which says: "**Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law**". Needless to say, that any law repugnant to fundamental right cannot sustain as provided by the Honourable Supreme Court in *Watan Party & Others v Federation of Pakistan & Other* PLD 2012 Supreme Court 292 as under:

"Article 19A has thus, enabled every citizen to become independent of power centers which, heretofore, have been in the control of information on matters of public importance.... Article 19A is a grant of the Constitution and, therefore, cannot be altered or abridged by a law enacted by Parliament...It, therefore, will not for this Court to deny to the citizens their guaranteed fundamental right under Article 19A by limiting or trivializing the scope of such right through an elitist construction whereby information remains the preserve of those who exercise state power."

2. The requested information could not be withheld from a citizen by invoking an exemption clause without any justifiable grounds that have not been provided by the FBR and in violation of above command of the Supreme Court which is binding under Article 189 of the Constitution as explained by the Honourable Supreme Court in the following case:

Shahid Pervaiz v Ejaz Ahmad and others 2017 SCMR 206:

"A fourteen Member Bench of this Court in the case of *Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 SC 483)*, has concluded that where the Supreme Court deliberately and with the intention of settling the law, pronounces

upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan. It cannot be treated as mere obiter dictum. Even obiter dictum of the Supreme Court, due to high place which the Court holds in the hierarchy in the country enjoy a highly respected position as if it contains a definite expression of the Court's view on a legal principle, or the meaning of law".

3. It may further be noted that the Honourable Supreme Court provided that any adverse, derogatory and/or contemptuous remarks about the judgement of the apex court by any subordinate court of an authority can lead to serious consequences as explained in *Mirza Shaukat Baig and Other v Shahid Jamil & Others* PLD 2005 Supreme Court 530 as under:

"30. The learned Division Bench of Lahore High Court has ignored the case law enunciated in different judgments pronounced by this Court on the grounds which are not tenable and by ignoring the fact that the judgments of this Court being apex Court are binding upon the learned High Court in the view of the provisions as enumerated in Article 189 of the Constitution of Islamic Republic of Pakistan which, inter alia, provides that any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or initiate a principle of law shall be binding on all other Courts in Pakistan and the learned Lahore High Court is no exception to it. It is well-entrenched legal proposition that "the ultimate responsibility of interpreting the law of the land is that of the Supreme Court. Therefore, any decision of the Supreme Court shall to the extent that it decides a question of law or is based upon or enunciates a principle of law is binding on all other Courts in Pakistan.

A decision in suo motu Shariat review petition followed by Supreme Court would be binding on all other Courts in Pakistan. Law declared by Supreme Court becomes the law of the land and is binding not only on all Courts in Pakistan but also on all functionaries of the Government." (PLD 1971 SC 324, PLD 1985 SC 228. It is worth mentioning here that "where a judgment of Supreme Court has become effective as from a specified date, it would be binding not only on High Court's and Courts subordinate to it but also on all other Courts of Pakistan from that date. Therefore, High Court rightly preferred Supreme Court decision over decision of Full Bench of High Court. The decision of Supreme Court cannot be ignored on the ground that certain grounds were not urged before Supreme Court" (PLD 1987 Lah.71, 1981 SCMR 520, PLD 1973 Lah. 1). "Apart from the Constitutional obligation imposed upon the Courts even the propriety demands that the Courts must follow such a law without any hesitation. Unless the law so declared is altered or overruled by the Supreme Court itself, the High Court has no option but to follow it" (PLD 1975 Lah. 65, PLD 1964 Peshawar 250).

31. We have also noted that the language as used in paragraphs 14, 15, 16 and 17 in the judgment impugned appears to be derogatory and contemptuous which cannot be ignored lightly and it is directed that care and caution must be observed while offering comments on any judgment delivered by this Court in order to avoid the possibility of suo motu action by the Supreme Judicial Council and initiation of proceedings under the contempt laws".

4. In view of above judgements of the Supreme Court, it was binding on FBR to provide information in terms of Article 19A read with Right to Information Act, 2017 **in a matter of public importance.**
5. The relevant part of information sought in my letter dated 17-12-2019 is as under:

“A statement, released from the office of Special Assistant to the Prime Minister on Accountability Shahzad Akbar, said that Britain had agreed to an immediate repatriation of the funds received after the settlement and hailed it as a success story of close cooperation between the United Kingdom and Pakistan’s multiple law enforcement agencies and efforts made since last year’s Justice and Accountability Partnership created between the two countries.

We hereby request as follows:

- i. If an income tax recovery process has been started against Malik Riaz for the disclosed sum of 190 million pounds of undeclared wealth in the United Kingdom?
 - ii. How and when, FBR plans to recover the income tax from Malik Riaz?”
6. Even a plain reading of the requested information shows that it belongs to the category of information which public bodies like FBR are legally bound to proactively disclose under Section 5(a) of the Right of Access to Information Act 2017 and Article 19A of the Constitution. The information which should have been proactively disclosed by the FBR is being protected from sharing with a citizen in the name of “secrecy” under section 216 of the Income Tax Ordinance, 2001 and section 7(g) of the Right to Information Act, 2017 whereas both are not relevant in the circumstances of the cases and even otherwise cannot be interpreted to render Article 19A redundant or abridged as explained by Honourable Supreme Court in *Watan Party & Others v Federation of Pakistan & Other* PLD 2012 Supreme Court 292 cited supra.
7. The FBR rejected the requested information on the following grounds:
 - 1) “I am directed to convey that your application has been examined by Competent Authority and is of the view that the right to information under “Right to Information Act, 2017”, is subject to regulation and reasonable restrictions imposed by Law, whereas, the requisite information is exempt from disclosure under Sub-section(2) of section 216 of Income Tax Ordinance, 2001, which states that:
“Notwithstanding anything contained in the Qanun-e1 [Shahadat], 1984 (P.O. Order No. 10 of 1984), or any other law for the time being in force, no court or other authority shall be, save as provided in this



OWN YOUR RIGHTS

Ordinance, entitled to require any public servant to produce before it any return, accounts, or documents contained in, or forming a part of the records relating to any proceedings under this Ordinance, or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof."

- 2) Moreover, section 7(g) of the Right to Access to Information Act, 2017 itself also exclude the record relating to the personal privacy of any individual. Since the requisite information is considered to be confidential therefore, the same cannot be disclosed.
 - 3) In view of the above your request under Right to Access to Information Act, 2017 stands disposed of accordingly."
8. I never sought "record relating to the personal privacy of any individual" as mentioned in section 7(g) of the Right of Access to Information Act 2017. It is also worth mentioning that section 216 is not attracted because information is not protected from public disclosure under sub-section (6C) of the said section which says: **"Nothing contained in sub-section (1) shall prevent the Board from publishing the names of offshore tax enablers, in the print and electronic media who have enabled offshore tax evasion.**
9. That instead of denying my right to information, it is rather a proactive duty of the FBR to publish such an information which it has failed to perform and is liable to be proceeded against by your Honour.
10. Your Honour will appreciate that requested information strictly falls in the ambit of **"matters of public importance"** as ordained in Article 19A of the Constitution of Pakistan and elaborated by the Apex Court in above cited judgement.

In view of above, it is humbly prayed that FBR be directed to provide the requested information, rather fulfil its obligation of placing it on its website in terms of section 216(6C) of the Income Tax Ordinance, 2001.

Yours truly,
For Public Interest Law Association of Pakistan

Pervez Said
Chief Executive Officer