



**PRIME MINISTER'S OFFICE
ISLAMABAD**

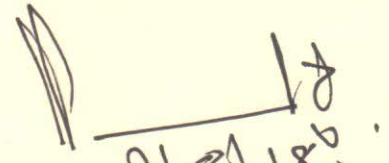
**Principal Staff Officer
to the Prime Minister**
Tele. No. 9207115, 9215034

No.3(1)/PSO(PM)/DS(SPM-71862)/2018-280

Islamabad the 9th August, 2018

Subject:- REQUEST TO SAVE BILLIONS OF OUR POOR NATION – SILENT PROPOSALS TO PROVIDE HUGE ILLEGAL TAX BENEFITS TO UNTAXED / BLACK MONEY THROUGH FINANCE BILL (BUDGET) 2018 – CLAUSE 86(a) SILENTLY INTRODUCED IN BUDGET 2018-19 FOR AVAILING BENEFIT RETROSPECTIVELY WITH EFFECT FROM JANUARY 2014.

Reference is made your application addressed to the Prime Minister of Pakistan on the above mentioned subject. In this regard, the reply received from FBR is enclosed herewith for your information.


9/8/18
(Muhammad Ali)_{PAS}

Justice (R) Dr. Ghous Muhammad,
Trustee for Chairman,
Transparency International Pakistan,
4-C, Mezzanine Floor,
Khayaban-e-Irrehad, Phase-VII,
Defence Housing Authority,
Karachi.

Government of Pakistan
Revenue Division
Federal Board of Revenue

SUBJECT: REQUEST TO SAVE BILLIONS OF OUR POOR NATION-SILENT PROPOSALS TO PROVIDE HUGE ILLEGAL TAX BENEFITS TO UNTAXED / BLACK MONEY THROUGH FINANCE BILL (BUDGET) 2018-CLAUSE 86(a) SILENTLY INTRODUCED IN BUDGET 2018-19 FOR AVAILING BENEFIT RETROSPECTIVELY WITH EFFECT FROM JANUARY, 2014.

Please refer to your office U.O. No. 3(1)/PSO(PM)/DS(SPM-71862)/2018-280 dated 10.05.2018 on the subject captioned above.

2. I am directed to state that the Prime Minister of Pakistan, in an address to the Business Community in Islamabad on 28th November 2013, announced an incentive package for promotion of growth and Investment by providing for different facilitative measures. The salient features of this package were promotion of investment, immunity from audit, recognition to top taxpayers, facilitation in return filing, facilitating entry into the tax net and creating ease of doing business etc. In order to promote investment the Prime Minister in his address also announced immunity from any probe/ scrutiny of source in respect of investment in the Green Field Industrial and Expansion Projects which also include captive power plants, low cost housing construction, livestock and mining and quarrying in Thar Coal project, mining projects in Balochistan and Khyber Pakhtunkhwa and other expansion projects provided these projects are setup on or after 1st January, 2014. However the Prime Minister in his speech also announced that these incentives would not be available to certain sectors namely arms & ammunition, explosives, fertilizers, sugar, cigarettes, aerated beverages, cement, textile spinning units, flour mills, vegetable, ghee and cooking oil manufacturers, as these sectors either already have excess capacity or are anti-social.

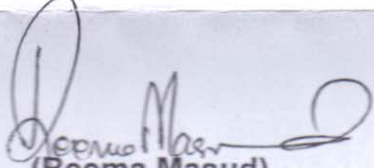
3. As a result of the above mentioned incentives announced by the Prime Minister and in pursuance of the said announcement clause (86) was inserted through SRO 1065(I)/2013 dated 20-12-2013 as per the powers conferred under section 53 of the Income Tax Ordinance. As required under sub-section (3) of section 53 of the Income

Tax Ordinance, 2001 the amendment made in part IV of the Second Schedule to the Ordinance through the aforementioned SRO was placed before the National Assembly along with Finance Bill 2014. The introduction of the aforementioned clause (86) in part IV of the second schedule to the Ordinance was not illegal or unconstitutional. It was inserted as per the policy enunciated by the Prime Minister and in pursuance of the Prime Minister's directions as per law. At this juncture it is also prudent to point out that the assertion by Transparency International that the said clause being illegal, unconstitutional, mala fide and representing undue benefit has been struck down by Lahore High Court, is misplaced and not based on facts. In the aforementioned judgment the Honourable Lahore High Court did not adjudicate upon the merits of the aforementioned clause. In fact the Court struck down the SRO on purely technical grounds on the basis of the ratio settled in the Mustafa Impex case.

4. The Apex court in the aforementioned judgment held that notifications issued with the approval of the Secretary and Advisor to PM were unconstitutional for the reason that the same were not issued by the Federal Government comprising of the Prime Minister and the Cabinet. The Court dilated upon various issues concerning the term Federal Government, the executive authority of the federation, delegation/conferment of legislative powers/functions and Rules of business as well as their nature scope and applicability etc. In the passages of the judgment which, strictly speaking, constitutes *obiter dicta* the Court observed that subordinate/delegated legislation cannot be delegated to any other person(s) or entities other than the Federal Government.

5. It is imperative to understand that this was the only issue dilated upon by the Court as a result of which the amendment was struck down. The insinuation that the benefit has been provided retrospectively w.e.f January 2014 is not based upon a correct and objective appreciation of the facts. The said clause has been reinserted through the Finance Act, 2018 to simply remedy the technical basis upon which the amendment in the Second Schedule to the Ordinance through SRO 1065 (I)/2013 dated 20.12.2013 was struck down. Furthermore, a practical implication of the insertion through the Finance Act, 2018 is that consequent to the introduction of the Prime

Minister's incentives through clause (86) of Part IV of the Second Schedule to Ordinance, people availed the benefits of the scheme. The court's decision to strike down the aforementioned clause on technical basis puts such people who have already availed the benefits of the scheme at a disadvantage. In order to protect the benefits availed and to remedy the technical basis of the striking down of the provision, clause (86) was re introduced w.e.f January 2014. The said amendment falls within the purview of the legislature and within its constitutional ambit when legislating to insert clause (86) in Part IV of the Second Schedule to the Income Tax Ordinance, 2001. The question of malafide or corruption does not arise.



(Reema Masud)

Secretary (Income Tax Policy)

✓ The Principal Staff Officer to the Prime Minister's, Prime Minister Office, Islamabad
FBR's ,U.O.No.1 C.No.1(72)Secy(ITP)/2018-95033-R dated 7th August, 2018