

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D – 2939 of 2011

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI.
MR. JUSTICE AZIZ-UR-REHMAN.**

Dr. Ashfaq Ahmed Tunio and others

Vs.

Federal Investigation Agency and others

Petitioners: Mr. Khalid Javed Khan, Advocate

Respondents: Mr. Salman Talibuddin, Additional Attorney General for Pakistan along with Mumtaz-ul-Hassan, Deputy Director, Lubna Tiwana, A.D, Gulsher Mugheri, Inspector, Deedar Ali Shaikh, Abdul Jabbar Mendhro and Nabil Mehboob, Inspectors, F.I.A.

Date of Hearing: 28.02.2018.

Date of Judgment: 28.02.2018.

JUDGMENT

Aqeel Ahmed Abbasi, J. Through instant petition, the petitioners, who are civil servants serving as officer of Federal Board of Revenue(FBR) as Additional Commissioner(s) and Deputy Commissioner(s), Inland Revenue, F.B.R. have alleged harassment by the F.I.A. Authorities pursuant to a purported inquiry No.61/2011, and have also challenged the letters dated 14.06.2011, 07.07.2011, 06.08.2011 and 22.08.2011, issued by the respondents No.3 & 4 in purported exercise of powers under F.I.A. Act, 1974, for being without jurisdiction or lawful authority and also arbitrary in nature, whereas, following relief(s) has been sought:-

- I. Declare that the Respondents and their officers have no lawful authority or jurisdiction under the law to conduct any inquiry or initiate any proceedings in respect of matters falling within

the provisions of the Sales Tax Act, 1990, Income Tax Ordinance 2001 and the Federal Excise Act, 2005.

- II. Declare that the Respondents and their officers have no jurisdiction or lawful authority to conduct any fishing or roving inquiry against the Petitioners as has been done by the Respondents No.3 and 4.
- III. Declare that the letters dated 14.06.11, 07.07.11, 06.08.11 and 22.08.11 issued by the Respondent No.3 and 4 in purported exercise of power under the FIA Act, 1974, were issued arbitrarily, without jurisdiction or lawful authority whatsoever.
- IV. Set aside the notices/letters dated 14.06.11, 07.07.11, 06.08.11 and 22.08.11 issued by the Respondent No.3 and 4.
- V. Restrain and prohibit the Respondents, their officers from conducting any inquiry or investigating or from conducting any other proceeding against the Petitioners or from taking any adverse action against the Petitioners in any manner whatsoever.
- VI. Grant any other relief deemed just and appropriate in the circumstances of the case.
- VII. Grant costs of the petition.

2. It has been contended by the learned counsel that petitioners are employed with the F.B.R. as officers of Inland Revenue, LTU at Karachi and have always performed their duty to the best of their ability and have never been charged with any offence nor departmental proceedings have been initiated against the petitioners. However, a letter dated 14.06.2011 was issued by the Deputy Director, F.I.A., Crime Circle to the Chief Commissioner (LTU), F.B.R., Government of Pakistan, Karachi, pursuant to some purported Inquiry No.61/2011 of F.I.A. Crime Circle, Karachi, seeking information regarding the petitioners from Chief Commissioner, LTU, FBR. Such letter was duly responded by the Chief Commissioner, LTU, Karachi, vide letter dated 25.06.2011, whereby, respondents were informed that in terms of Subsection (2) of Section 227 of the Income Tax Ordinance, 2001, no investigation or inquiry can be undertaken or

initiated by any Government Agency against any officer of Inland Revenue Department for anything done in his official capacity under the law, without prior approval of the Board. Learned counsel for the petitioners has further submitted that without prejudice to hereinabove legal objection, Inland Revenue Department, including Department of Income Tax, Sales Tax and Federal Excise Tax, have been excluded from the schedule of F.I.A. Act, 1974, therefore, F.I.A. has no jurisdiction to initiate any inquiry or investigation against the officials of Inland Revenue Department. Per learned counsel, even on the merits of instant case, the information being sought through impugned letter addressed to the Chief Commissioner, followed by letters dated 22.08.2011, issued directly to the petitioners could not be termed as an inquiry as per law for the reason that neither there was any lawful basis to initiate such inquiry, nor the petitioners were confronted with any material or even supplied copy of complaint, which could justify initiation of inquiry against the petitioners by the F.I.A. Authorities. Learned counsel for the petitioners has referred to provisions of Section 227 of the Income Tax Ordinance, 2001 and submitted that all acts done, assessments made under the Income Tax Ordinance, 2001, have been provided protection against any intervention by any Federal Investigation Agency, for the reason that all such orders and proceedings are subject to Administrative as well as quasi-judicial and judicial scrutiny before the Specialized Appellate Forums provided under the Income Tax Ordinance, 2001. Per learned counsel, entire proceedings are based on malafides and beyond legal mandate, hence liable to be quashed. In support of his submissions, learned counsel has placed reliance on the following cases:-

- i) *Adamjee Insurance Company Limited v. Federal Investigation Agency (F.I.A) (2004 CLD 246)*
- ii) *Director General, F.I.A. and others v. Kamran Iqbal and others (2016 SCMR 447)*

- iii) *Kohinoor Industries Ltd. Faisalabad v. Govt. of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PTCL 1994 CL 280)*
- iv) *Play Pictures through Proprietor and 8 others v. The Central Board of Revenue through Member, Customs, Islamabad and 4 others (2000 CLC 1403)*
- v) *English Sweets (Pvt) Ltd. Karachi v. Pakistan through Secretary to the Government of Pakistan, Islamabad and 3 others (2005 PTD 247)*
- vi) *Raj Muhammad Khan and others v. Muhammad Farooq Khan and other (1998 SCMR 699)*
- vii) *Assistant Director, Intelligence and Investigation, Karachi v. M/s B.R. Herman and others (PLD 1992 SC 485)*
- viii) *Muhammad Irshad Khan v. Chairman, National Accountability Bureau and 2 others (2007 PCr.L.J 1957)*
- ix) *Ghulam Sarwar Zardari v. Piyar Ali alias Piyaro and another (2010 SCMR 624)*

Notice of such application was issued to the respondents as well as DAG and the respondents were directed to maintain status quo.

3. Pursuant to Court Notice, comments have been filed on behalf of the respondents, wherein, it has been stated that respondents have acted in accordance with the provisions of section 5 of the Prevention of Corruption Act, 1947, pursuant to an Inquiry No.61/2011 dated 07.06.2011, initiated on a complaint received through email from one, Moin Aziz Mirza, against the petitioners on the allegations of corruption and corrupt practices. According to complainant, petitioners' are corrupt officers who have minted money by accepting bribes from various Assessors during their posting in Large Taxpayer's Unit, and thereby caused loss of millions of rupees to National exchequer while extending benefit to taxpayers. It has been stated in the comments that petition is not maintainable, and liable to be dismissed, as respondents have initiated inquiry on the basis of a written complaint. Learned Additional Attorney General duly assisted by affairs of FIA and the Inquiry Officer has reiterated the comments

filed on behalf of the respondents and argued that respondents have acted in accordance with Section 5 of the F.I.A. Act, 1974 and have issued impugned letter(s) to the petitioners pursuant to Enquiry No.61/2011 dated 07.06.2011 on the allegations of corruption, corrupt practices and accumulation of assets by illegal means, whereas, according to learned Additional Attorney General, the inquiry was registered on the basis of a complaint received through email from one Moin Aziz Mirza, therefore, there is no malafide on the part of respondents. It has been further argued by learned Additional Attorney General that FIA has the jurisdiction in terms of Section 5 of the F.I.A. Act, 1974, to conduct an inquiry if some schedule offence is committed by any Government employee, whereas, the alleged offences against the petitioners are schedule offences under F.I.A. Act, 1974.

4. Perusal of the record of instant case shows that a letter No.FIACCK/Enq-61/2011/4043-44 dated 14.06.2011 was issued by Deputy Director, F.I.A., namely, Muhammad Akbar Baloch, to the Chief Commissioner, LTU, F.B.R, Government of Pakistan, Karachi, whereby, it was informed that an Inquiry No.61/2011 pursuant to a complaint has been entrusted to Assistant Director, Ghulam Abbas Baloch, F.I.A. Crime Circle, Karachi, whereas, assessment files of various companies with the names of tax consultant and assets proforma duly filled by the petitioners was required to be furnished within 10 days from the receipt of such letter. It will be advantageous to reproduce the contents of such letter hereunder:-

“OFFICE OF THE DEPUTY DIRECTOR
FEDERAL INVESTIGATION AGENCY
CRIME CIRCLE,
Barrack No.41, Pak Secretariat,
Shahrah-e-Iraq, Saddar, Karachi.
Ph:021-99203088 Fax: 021-35216327

The Chief Commissioner,
Large Tax Payers Unit (LTU),
FBR Government of Pakistan,
Karachi.

SUB: ENQUIRY NO.61/2011 OF FIA CRIME CIRCLE, KARACHI –
COMPLAINT AGAINST MOST CORRUPT OFFICERS OF LTU.

It is submitted that the subject enquiry has been entrusted to Assistant Director Ghulam Abbas Baloch, FIA, Crime Circle, Karachi.

In connection with the investigation of subject enquiry the detail of case assessed by the following officers during their posting in LTU is urgently required:-

Mr. Shafqat Hussain Kehar of Large Taxpayers Unit

1. New allied Electronics (Formerly known as LG)
2. Sitara Chemical
3. Al-Karam Textile (Year 2007)
4. Habib Metropolitan Bank.
5. Excide Case.

Mr. Ashfaq Tunio

All the cases assessed by him.

Mr. Zia Agro

1. Sami Pvt Ltd.
2. Efroze Chemicals
3. Hilton Pharma.
4. Indus Pharma.

Mr. Abdul Hameed Shaikh

All the cases assessed by him.

Mr. Azhar Erum Memon

All the cases assessed by him.

It is therefore requested that the assessment files particularly of the companies mentioned under the names of officers of LTU may be provided with the name of tax consultant. A focal person may also be nominated to keep liaison between FIA and LTU for smooth and quick official working.

An asset proforma is enclosed herewith required to be filled by each of the above mentioned officers and returned back to the Enquiry Officer containing required information/record within 10 days after receipt of this letter.

Your co-operation in the matter will be highly appreciated.

Sd/-

(MUHAMMAD AKBAR BALOCH)
DEPUTY DIRECTOR

Copy to Assistant Director Abbas Baloch, Enquiry Officer, FIA, Crime Circle, Karachi, for necessary action.

(MUHAMMAD AKBAR BALOCH)
DEPUTY DIRECTOR”

5. The aforesaid letter was duly responded by the Chief Commissioner, LTU, Karachi, vide letter dated 25.06.2011 in the following manner:-

*“CHIEF COMMISSIONER INLAND REVENUE
LARGE TAXPAYERS UNIT, KARACHI*

No.Jud-()/1011/1280

June 25, 2011

To,

Mr. Muhammad Akbar Bloch,
Deputy Director,
FIA, Crime Circle,
KARACHI.

Subject:- ENQUIRY NO.61/2011 OF FIA CRIME CIRCLE,
KARACHI – COMPLAINT AGAINST MOST CORRUPT
OFFICERS OF LTU.

Please refer to your office letter No.FIA/CCK/Enq-61/2011/4043-44, dated 14.06.2011 on the subject notice above.

In this connection, you are hereby informed that sub-section (2) of section 227 of the Income Tax Ordinance, 2001 clearly places bar on initiation of any inquiry by any government agency against any Officer or official of Inland Revenue without the prior approval of FBR. The said sub-section of Section 227 of the Income Tax Ordinance, 2001 is reproduced for the sake convenience as under:-

“227.- Bar of suits in Civil Court:-

- (1)
- (2) Notwithstanding anything contained in any other law for the time being in force, no investigation or inquiry shall be undertaken on initiated by any government agency against any officer or officials for anything done in his official capacity under this Ordinance, rules, instructions or direction made or issued there-under without the prior approval of the Board.”

You are therefore hereby informed that the inquiry initiated by your office vide above referred letter is apparently without any lawful authority and, therefore, this office is unable to provide the record requisitioned by you in pursuance thereof.

Sd/-

(SHAHID H. JATOI)
CHIEF COMMISSIONER INLAND REVENUE
LARGE TAXPAYER UNIT, KARACHI

Copy to Member (Administration), FBR, Islamabad for information.

(SHAHID H. JATOI)
CHIEF COMMISSIONER INLAND REVENUE
LARGE TAXPAYER UNIT, KARACHI”

6. Pursuant to letter of the Chief Commissioner as referred to hereinabove, the Deputy Director, F.I.A., namely, Muhammad Akbar Baloch, Crime Circle, Karachi, written another letter No.FIA/DSK/ENQ/61/2011/CCK/73-13935-36 dated 18.07.2011 to the Chief Commissioner, which reads as follows:-

*“OFFICE OF THE DIRECTOR
FEDERAL INVESTIGATION AGENCY
SINDH KARACHI,*

No.FIA/DSK/ENQ/61/2011/CCK/73-13935-36 Dated 18.07.2011

The Chief Commissioner,
Inland Revenue,
Large Taxpayers Unit,
Karachi.

SUB: ENQUIRY NO.61/2011 OF FIA CRIME CIRCLE, KARACHI –
COMPLAINT AGAINST MOST CORRUPT OFFICERS OF LTU

Please refer to your letter No.Jud-()/10-11/280 dated 25.06.2011 addressed to Deputy Director FIA Crime Circle, Karachi on the subject noted above.

It is informed that FIA Crime Circle, Karachi is conducting an enquiry against the alleged public servants of Income Tax Department under section 5 of FIA Act, 1974 for their alleged involvement in corruption, corrupt practices and acquiring properties disproportionate to their known sources of income. The allegations, if established during enquiry, may attract the provisions of section 5(1) of Prevention of Corruption Act-II, 1947, punishable under section 5(2) of the said act. Being schedule offences, FIA is legally competent to enquire into and investigate such offences. The saving clause referred in the letter under reference does not affect the FIA from conducting enquiry into the alleged charges of criminal misconduct against Federal Public Servants, nor debars the FIA from performing their lawful duty as envisaged under FIA Act.

It is, therefore, requested that the requisite documents may kindly be provided to complete the enquiry accordingly.

Sd/-

Deputy Director (Crime)
For Director

Copy to Deputy Director FIA Crime Circle, Karachi with reference to his letter No.FIA/CCK/ENQ-61/2011/4644 dated 09.07.2011 for information and necessary action.

Deputy Director (Crime)
For Director”

7. In addition to hereinabove letter, the Assistant Director/E.O., F.I.A., Crime Circle, Karachi, namely, Abbas Baloch, for the first time, issued individual letters to the petitioners, namely, Ashfaq Tunio, being letter No.FIA/CCK/ENQ-61/2011/5177-79, Shafqat Hussain Kehar, being letter No.FIA/CCK/ENQ-61/2011/5174-76, Azhar Erum Memon, being letter No.FIA/CCK/ENQ-61/2011/5186-88, Zia Agro, being letter No.FIA/CCK/ENQ-61/2011/5180-82 and Abdul Hameed Shaikh, being letter No.FIA/CCK/ENQ-61/2011/5183-85, all dated even date i.e. 06.08.2011, the contents of which letter being common, are reproduced hereunder for the sake of ready reference:-

“ OFFICE OF THE DEPUTY DIRECTOR
FEDERAL INVESTIGATION AGENCY
CRIME CIRCLE, BLOCK-41, PAK.
SECTT. SHAHRAH-E-IRAQ, SADDAR
KARACHI. PH:99203076

No.FIA/CCK/ENQ-61/2011/5180-82 Dated 06.08.2011

Mr. Zia Agro, D.C.,
Large Tax Payers Unit (LTU),
FBR Government of Pakistan,
Karachi.

SUB: ENQUIRY NO.61/2011 OF FIA CRIME CIRCLE, KARACHI –
COMPLAINT AGAINST MOST CORRUPT OFFICERS OF LTU.

Please refer to this office letters No.FIA/CCK/ENQ-61/2011/4043-44 dated 14.06.2011 and No.FIA/CCK/ENQ-61/2011/4593-94 dated 07.07.2010 addressed to the Chief Commissioner, Inland Revenue, Large Tax Payers Unit, Karachi, on the subject cited above.

Assets proforma was sent through above referred letter No.4043-44 dated 14.06.2011, which was required to be filled by you and returned back to this office within ten days but it is still awaited from your end.

You are, therefore, required to be filled this Assets proforma and sent to this office on or before 10.08.2011 without fail to enable the undersigned to proceed further in the instant enquiry.

(ABBAS BALOCH)
Assistant Director/E.O.
F.I.A. Crime Circle, Karachi.
Mob: 0300-8296060

NO.FIA/CCK/ENQ-61/2011/ Dated: .08.2011

Copy to:-

1. The Chief Commissioner, Large Tax Payers Unit (LTU), FBR, Govt. of Pakistan, Karachi, with the request to direct the concerned officer for compliance.
2. The Deputy Director, FIA, Crime Circle, Karachi, for information, please.

Sd/-
(ABBAS BALOCH)
Assistant Director/E.O.”

8. The above letter issued by the Assistant Director, was duly responded by one of the petitioner, namely, Zia Agro, vide his letter dated 10.08.2011, in the following terms:-

“
Office of the
Deputy Commissioner Inland Revenue,
Audit Unit III, Zone III,
Large Taxpayers’ Unit, Karachi.

No.DCIR-III/Z-III/LTU/2011

August 10,2011

The Assistant Director,
FIA Crime Circle,
Block-41, Pak Sectt.
Shahrah-e-Iraz, Saddar,
Karachi.

Subject:ENQUIRY NO.61/2009 OF F.I.A., CRIME CIRCLE, KARACHI.

Please refer to you letter bearing No.FIA/CCK/ENQ-61/2011/5183-85 dated 06.08.2011 received in the office of Commissioner Inland Revenue, Zone III, Large Taxpayers’ Unit, Karachi and handed over to the undersigned on 9th August, 2011.

2. In the said letter, you have requested the undersigned to fill in certain “Assets Proforma” and send to your office on or before 10.08.2011 (intervening time of less than 24 hours). However, neither any copy of the subject complaint nor the grounds for initiating such inquiry have been provided.
3. In this regard, it is informed that the undersigned is a BS-18 officer of Inland Revenue Service, performing duties and functions in accordance with the provisions of the Income Tax Ordinance, 2001, the Sales Tax Act, 1990, Federal Excise Act, 2005 and rules and regulations made thereunder. It is clearly evidence from the Schedule to the FIA Act, 1974 that the jurisdiction of FIA does not extend to matters falling under the Income Tax Ordinance, 2001, the Sales Tax Act, 1990 and Federal Excise Act, 2005. Thus, FIA has no jurisdiction in respect of matters falling under these statutes under which I am performing my functions and duties.
4. Secondly, the jurisdiction of FIA is specifically excluded from by virtue of section 227(2) of the Income Tax Ordinance, 2001, which states that:

“227.- Bar of suits.....

 - (1)
 - (2) **Notwithstanding anything contained in any other law for the time being in force**, no investigation or inquiry shall be undertaken on initiated by any government agency against any officer or officials for anything done in his official capacity under this Ordinance, rules, instructions or direction made or issued there-under without the prior approval of the Board.”
5. This provision was specifically introduced in order to eliminate harassment of officers, and has overriding effect over all other laws,

including the FIA Act. Also, it is quite apparent that no prior approval of the Federal Board of Revenue has been obtained.

6. Thirdly, without prejudice to the above jurisdictional issues and bar under section 227(2) of the Income Tax Ordinance, 2001, you have not disclosed the specific context, facts / circumstances, or the specific transactions with respect to which the subject Enquiry is being conducted. Thus, this seems to be nothing but a fishing or roving Enquiry which is not permitted under law. The Hon'ble Supreme Court of Pakistan has categorically held in several cases that such fishing or roving enquiries are not permissible (e.g. Assistant Director Intelligence & Investigation, Karachi vs B.R. Herman and Others PLD 1992 SC 485).
7. It has been reliably learnt that your Enquiry has been initiated on the basis of a pseudonymous and anonymous complaint which makes vague, generalized allegations against several officers. Initiation of Enquiry on the basis of such pseudonymous and anonymous complaint is a clear violation of instructions of Establishment Division and Interior Ministry. The Interior Division's O.M. No.1/21/74-SP (P), dated 5-3-11975, which govern the procedure of FIA, states as follows:

“.....

 2. When the identity of the complainant is not known, as will happen when the complainant is anonymous or pseudonymous, the Agency shall not register a case unless they are able to obtain, by the preliminary enquiry, independent corroboration of the allegations made in the complaint.
 3. When the identity of the complainant is not known, the Agency shall ascertain from him full facts in support of his allegations and shall, after doing so, proceed in the manner laid down in the succeeding paragraphs.
 4. If the preliminary enquiry, referred to in paragraphs 2 and 3 above, shows that there is reason to suspect the commission of an offence which the Agency is empowered to investigate, the Agency shall at once send a brief statement of the case to the competent authority and seek its concurrence to the registration of the case. On receipt of this concurrence, the Ministry or Department under which the Government servant concerned is serving shall be informed of the registration of the case....”
8. Under Article 10-A of the Constitution of The Islamic Republic of Pakistan (fundamental right to be treated through the due process of law), you are bound to follow the above-stated laid down legal procedures, rules, regulations and the laws in force before initiation of any inquiry against any officer of the Federal Government.
9. Whereas, neither any independent corroboration of the allegations has been obtained by you, nor the approval to initiate inquiry has been obtained from the concerned department, i.e. Federal Board of Revenue, thus, the instructions of the Interior Division have been blatantly ignored and due process of law as envisaged by the Constitution of Pakistan has not been followed in letter and spirit.
10. Thus, until and unless the above jurisdictional, legal and factual issues as referred above are not properly addressed by you, the undersigned would not be in a position to provide you any assistance. You are therefore requested to address these issues before seeking information mentioned in your letter.

Sd/-
Zia Agro

Deputy Commissioner

1. Copy for kind information to the Chief Commissioner Inland Revenue, Large Taxpayers Unit, Karachi.
2. Copy also for information to the Director FIA, Karachi. He is requested to direct the Assistant Director FIA not to harass the officers on the basis of vague and frivolous pseudonymous complaints.

Zia Agro
Deputy Commissioner”

9. On receipt of aforesaid reply by the petitioners, the Assistant Director/E.O. F.I.A., Crime Circle, Karachi, had issued a letter No.FIA/CCK/ENQ-61/2011/5490-91 to the petitioner, namely, Dr.Ashfaq Ahmed Tunio, dated 22.08.2011, which reads as follows:-

“

OFFICE OF THE DEPUTY DIRECTOR
FEDERAL INVESTIGATION AGENCY
CRIME CIRCLE, BLOCK-41, PAK.
SECTT. SHAHRAH-E-IRAQ, SADDAR
KARACHI. PH:99203076

No.FIA/CCK/ENQ-61/2011/5490-91

Dated 22.08.2011

Dr. Ashfaq Ahmed Tunio,
Additional Commissioner-IR, Inland Revenue,
Range-B, Zone III, LTU,
Karachi.

SUB: ENQUIRY NO.61/2011 OF FIA CRIME CIRCLE, KARACHI –
COMPLAINT AGAINST MOST CORRUPT OFFICERS OF LTU.

Please reference to your office letter No.ACIR/Range-B/Zone-III/LTU/2010-11 dated 10.08.2011, on the subject noted above.

It is to inform you that F.I.A., Crime Circle, Karachi is conducting an enquiry against the alleged public servants of Income Tax Department under Section 5 of F.I.A. Act, 1974 for their alleged involvement in corruption, corrupt practices and acquiring properties disproportionate to their known sources of income. The allegations, if established during enquiry, may attract the provisions of Section 5(1) of Prevention of Corruption Act-II, 1947, punishable under Section 5(2) of the said Act. Being schedule offence, F.I.A. is legally competent to enquire into and investigate such offences. The saving clause referred in the letter under reference does not affect the FIA from conducting enquiry into the alleged charges of criminal misconduct against Federal Public Servants, or debars the F.I.A. from performing their lawful duty as envisaged under F.I.A. Act.

You are, therefore, required to fill the Assets proforma already delivered to you and sent to this office on or before 25.8.2011 without fail to enable the undersigned to proceed further in the instant enquiry.

(Assets Performa enclosed)

Sd/-

(ABBAS BALOCH)
Assistant Director/E.O.
F.I.A. Crime Circle, Karachi.

NO.FIA/CCK/ENQ-61/2011

Dated:- .08.2011

Copy to the Deputy Director, FIA, Crime Circle, Karachi, for information, please.

(ABBAS BALOCH)
Assistant Director/E.O.”

10. Learned Additional Attorney General duly assisted by officers of FIA and the Inquiry Officer has reiterated the comments filed on behalf of the respondents and argued that respondents have acted in accordance with Section 5 of the F.I.A. Act, 1974 and have issued impugned letter(s) to the petitioners pursuant to Enquiry No.61/2011 dated 07.06.2011 on the allegations of corruption, corrupt practices and accumulation of assets by illegal means, whereas, according to learned Additional Attorney General, the inquiry was registered on the basis of a complaint received through email from one Moin Aziz Mirza, therefore, there is no malafide on the part of respondents. It has been further argued by learned Additional Attorney General that FIA has the jurisdiction in terms of Section 5 of the F.I.A. Act, 1974, to conduct an inquiry if some schedule offence is committed by any Government employee, whereas, the alleged offences against the petitioners are schedule offences under F.I.A. Act, 1974.

11. From perusal of hereinabove correspondence ensued between the FIA Authorities and the petitioners, it transpires that while issuing impugned letters to the petitioners, respondents, without disclosing the source of inquiry or having confronted the petitioners with the

purported complaint, on the basis of which such inquiry was reportedly initiated against the petitioners, required the Chief Commissioner, Inland Revenue, LTU, Karachi, to provide the details of cases assessed by the petitioners during their posting in L.T.U. within 10 days. Admittedly, no prior approval was obtained from the Federal Board of Revenue [FBR], while issuing such letters nor there is any reference to a particular assessment order in respect of an assessee for a tax year, in respect of which the respondents intended to conduct an inquiry or investigation. No details whatsoever, in respect of assets, allegedly acquired by the petitioners through corruption and corrupt practices, which would be disproportionate to their known sources of income, has been given in the impugned letters issued by the FIA Authorities. It has been further observed except filing comments on behalf of respondent, not a single document, including approval of the Competent Authority, purported complaint received from one Moin Aziz Mirza, or the details and description of assets (movable or immovable), which according to impugned letters issued by the FIA Authorities, have been acquired/owned by the petitioners through corruption and corrupt practices, has been placed on record for verification by the Court. During the course of hearing of instant petition, the Officers of the FIA including the I.O. of the inquiry, present in Court, were specifically inquired as to whether, they are in possession of any such evidence or material, including details of moveable and immovable assets, which the petitioners would have acquired through corruption and corrupt practices, however, they could not refer to any such evidence, material or information relating to such assets allegedly acquired or owned by the petitioners, which could otherwise, justify the initiation of the inquiry and investigation against the petitioners. Respondents were also inquired as to whether, pursuant to the inquiry and investigation against the petitioners, they

have recorded statement of the complainant or any other witnesses, however, respondents have categorically denied any such development in the instant case, inspite of the fact that instant inquiry against the petitioners is pending since 2011. The I.O. of Inquiry No.61/2011 vide order dated 06.02.2018, was required to place on record the basis of the inquiry, inquiry report alongwith evidence/material, if any, collected in this regard, however, instead of producing any of the requisite documents, the I.O. has filed statement dated 28.02.2018 alongwith copy of letter dated 04.06.2011, and also the copy of email from one Moin Aziz Mirza dated 28.05.2011 titled as "Complaint against Most Corrupt Officers of LTU". Admittedly, the petitioners were never confronted with this document, nor even the contents of such complaint were made known to the petitioners in the impugned letters issued by the FIA Authorities. Whereas, from perusal of the contents of this complaint, which has been placed on record before this Court for the first time, it is observed that except vague and generalized allegations and accusation against the petitioners, not a single instance of corruption or detail of any assessment, or the proceedings attached thereto, has been given. Similarly, no particulars or NTN of any taxpayer has been given nor reference to any specific assessment year or assessment order has been made scrutiny of which may reveal any malafide or illegality on the part of petitioners, which allegedly amounted to corruption or corrupt practice in the complaint.

12. In order to examine the scope and jurisdiction of the FIA Authorities, it will be advantageous to examine the preamble of Federal Investigation Act, 1974, Section 3 of the Act, which defines the scope and jurisdiction of FIA, Rule 5 (Inquiries and Investigations)

Rules, 2002, which prescribes procedure to initiate inquiry, which are reproduced herein-under:-

Preamble:

“Whereas it is expedient to provide for the constitution of a Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government, and for matters connected therewith.”

“Sec.3” **Constitution of the Agency.**--- (1) Notwithstanding anything contained in any other law for the time being in force, the Federal Government may constitute an Agency to be called the Federal Investigation Agency for inquiry into, and investigation of the offences specified in the Schedule, including any attempt or conspiracy to commit, and abetment of, any such offence.

(3) The Agency shall consist of a Director-General to be appointed by the Federal Government and such number of other officers as the Federal Government may, from time to time, appoint to be members of the Agency.”

“Rule 5”

5. Initiation of inquiry and registration of criminal case.--

(1) An inquiry shall be initiated against an accused public servant specified in column (2) of table below with prior permission of the authority, specified in column (3) of that table.

TABLE

<u>S.No</u>	<u>Basic Pay Scale of Public Servant</u>	<u>Authority</u>
1	BPS 1- 12 and equivalent	Deputy Director
2	BPS 13 - 17 and equivalent	Director
3	BPS 18 - 19 and equivalent	Director General
4	BPS 20 - 21 and equivalent	Secretary
5	BPS 22 and equivalent	FACC

(2) Subject to sub-rule (3), a criminal case shall be registered against an accused public servant specified in column (2) of table below with prior permission of the authority specified in column (3) of that table.

TABLE

<u>S.No</u>	<u>Basic Pay Scale of Public Servant</u>	<u>Authority</u>
1.	BPS 1-12 and equivalent	Director.
2.	BPS 13-17 and equivalent	Director General
3.	BPS 18-19 and equivalent	Additional Secretary
4.	BPS 20-21 and equivalent	Secretary
5.	BPS 22 and equivalent	FACC

(3) No prior permission under sub-rule (2) shall be required for registration of a case against a public servant caught as a result of the trap arranged by the Agency under the supervision of a Magistrate of the first class. In such case, a report within twenty four hours shall be of the department concerned and immediate superior of the public servant concerned.

(4) If no receipt of complaint, the competent authority decide not to initiate an inquiry or register a case it shall record reason there for.”

From perusal of preamble of FIA Act, 1974, it can be ascertained that the purpose and intention of enactment of FIA Act, 1974 is to provide for the constitution of a Federal Investigation Agency, to investigate certain **offences committed in connection with matters concerning the Federal Government and for matters connected therewith**. Though the preamble is not an operative part of Statute but nevertheless it does provide a useful guide for finding out the intention of the legislature and therefore, cannot be ignored while interpreting the law. Reliance in this regard can be placed in the case of *Murree Brewery Co. Ltd. v. Pakistan through the Secretary to Government of Pakistan and others* **PLD 1972 SC 279** as well as in the case of *Iftikhar Hussain and others v. Government of Pakistan* **2001 P.Cr.LJ 146** and the *State through Deputy Attorney General v. Muhammad Amin Haroon and 10 others* **2010 P.Cr.LJ 518** Whereas, as per Section 3 of the Act, the constitution, scope and jurisdiction of FIA has been defined according to which, FIA Authorities have been empowered **to conduct inquiry and investigation of the offences specified in the schedule attached to the FIA Act, 1974, including an attempt or conspiracy to commit and abetment of, in such offence**. Similarly, as per Rule 5 of the FIA (Inquiries and Investigations) Rules, 2002, prior permission of competent Authority as specified in Column 3 of the table is necessary before initiating an inquiry against an accused public servant. In the instant case, the petitioners against whom the inquiry has been initiated by the respondents are officers of BPS-18 and above, therefore, before initiating any inquiry against the aforesaid petitioners prior permission of D.G. FIA was required to be obtained, however, neither in the impugned letter issued by the respondents nor

in the comments or the documents placed on record during the course of hearing the respondents could demonstrate that prior permission was obtained from the Director General in the instant case. From perusal of the entries in the schedule to the Federal Investigation Agency Act, 1974, which are presently 38 in number, it can be seen that offences under the Income Tax Ordinance, 2001; Sales Tax Act, 1990; and Customs Act, 1969 have not been included in the schedule, which shows that any order passed and proceedings initiated under the aforesaid Acts, cannot be subject matter of inquiry and investigation under the FIA Act, 1974. In other words, the scrutiny of assessment proceedings, including the assessment orders under the Income Tax Ordinance, 2001; Sales Tax Act, 1990; and Customs Act, 1969 cannot be made by the FIA Authorities nor any inquiry or investigation can be initiated to examine the legality of assessment proceedings or the orders passed by the Taxation Authorities under the Income Tax Ordinance, 2001; Sales Tax Act, 1990; and Customs Act, 1969. Reliance in this regard can be placed to the reported judgment of the Hon'ble Supreme Court in the case of *Director General, FIA and others v. Kamran Iqbal and others* [2016 SCMR 447], wherein, it has been held as under:-

- “5. *Indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature. Reliance in this regard may be placed on, the case of Murree Brewery Company v. Limited v. Pakistan through the Secretary of Government of Pakistan and others (PLD 1972 SC 279). It is equally well established principle that while interpreting a, Statute a purposive approach should be adopted in accord with the objective of the Statute and not in derogation to the same.*
6. *Keeping in view the intent of the Act as spelt out from the preamble and the fact that through the Act the FIA, in terms of the schedule to the A ct has been granted jurisdiction and power to act in respect of several offences under the P.P.C.*

which are cognizable by the local police also, and also in order to avoid a conflict of jurisdiction, the only conclusion that the Court may draw is that for exercising jurisdiction in the matter of the offences enumerated in the schedule to the Act there has to be some nexus between the offences complained of the Federal Government or else there shall be overlapping of the jurisdiction of the local police and the FIA creating an anomalous aspect of concern is that though in terms of notification, bearing SRO 977(1)/2003, Section 489-F, P.P.C. has been made a scheduled offence under the FIA Act, but no reasonable classification has been provided for exercising such power and it is left to the discretion of the concerned officer of the FIA to exercise his authority and jurisdiction under the Act in respect of the said offence, which militates against the protection enshrined by Article 25 of the Constitution of Islamic Republic of Pakistan. If a citizen is exposed to the proceedings in respect of an offence lodged against him which could be initiated before more than one forums, a reasonable classification is the requirement of the Constitution.”

Further reliance in this regard can also be made in the case of *Adamjee Insurance Company Limited v. Federal Investigation Agency (F.I.A)* [2004 CLD 246].

13. Moreover, perusal of the contents of the complaint and the impugned letters issued by the FIA Authorities to the petitioners, reflects that the allegations and accusation against the petitioners, besides being vague and generalize in nature do not refer to any particular tax year, NTN Number or particulars of a taxpayer nor there has been any reference to Assets acquired by the petitioners through corruption and corrupt practices. FIA Authorities have failed to even verify the complaint and the allegations contained therein, nor have recorded the statement of the complainant inspite of considerable lapse of time. It is astonishing to note as to how, without examining the legal provisions relating to jurisdiction of FIA Authorities, ignoring the legal requirement to seek prior permission from Competent

Authority and even without verifying the complaint and the allegations therein to be correct or otherwise, the impugned inquiry could be initiated against the petitioners. It is pertinent to observe that the Income Tax Ordinance, 2001; Sales Tax Act, 1990; and Customs Act, 1969 are special enactments, which provide for quasi-judicial proceedings of assessment of income tax and sales tax liability, as well as determination of customs duty through quasi-judicial orders, which are appealable before the Appellate Forums provided under the respective Statutes, which includes Reference to the High Court, as well as Appeal before the Hon'ble Supreme Court, therefore, the FIA Authorities cannot sit in judgment upon the assessment proceedings or the orders passed by the Taxation Authorities to this effect. Whereas, in terms of Section 227 of Income Tax Ordinance, 2001, Section 51 of Sales Tax Act, 1990 and Section 217 of Customs Act, 1969, even the jurisdiction of Civil Courts has been ousted. Reliance in this regard can be placed to the following cases:-

- i) *Kohinoor Industries Ltd. Faisalabad v. Govt. of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PTCL 1994 CL 280)*
- ii) *Play Pictures through Proprietor and 8 others v. The Central Board of Revenue through Member, Customs, Islamabad and 4 others (2000 CLC 1403)*
- iii) *English Sweets (Pvt) Ltd. Karachi v. Pakistan through Secretary to the Government of Pakistan, Islamabad and 3 others (2005 PTD 247)*
- iv) *Raj Muhammad Khan and others v. Muhammad Farooq Khan and other (1998 SCMR 699)*

14. While applying the ratio of above judgments to the facts of the instant case, it is clear that the very initiation of the inquiry by the FIA Authorities against the petitioners was without lawful authority and based on malafides, whereas, respondents did not comply with legal requirements, which includes verification of complaint and the allegations contained therein, and prior permission of the Competent

Authority to initiate any inquiry. In the absence of any material, FIA Authorities cannot be allowed to carry out any fishing and roving inquiry or investigation against a public servant. Reference in this regard can be made to the following cases:-

- i) *Director General, F.I.A. and others v. Kamran Iqbal and others (2016 SCMR 447)*
- ii) *Assistant Director, Intelligence and Investigation, Karachi v. M/s B.R. Herman and others (PLD 1992 SC 485)*
- iii) *Muhammad Irshad Khan v. Chairman, National Accountability Bureau and 2 others (2007 PCr.L.J 1957)*
- iv) *Ghulam Sarwar Zardari v. Piyar Ali alias Piyaro and another (2010 SCMR 624)*

15. In view of hereinabove facts and circumstances of the instant case, we are of the considered opinion that the impugned Notices issued by the FIA Authorities and the inquiry and investigation initiated against the petitioners, pursuant to a purported complaint, are without jurisdiction and lawful authority, and also based on malafides, hence liable to be quashed. Accordingly, vide our short order dated 28.02.2018, instant petition was allowed alongwith listed applications and above are the reasons of such short order.

JUDGE

JUDGE