

CITIZENS WHISTLE BLOWERS FORUM

a forum against corruption



Dated: 9th January, 2017

To,
The Chairperson
Central Board of Direct Taxes
New Delhi

Sub: Complaint against inaction by CBDT in Sahara & Birla case

Dear Sir

I write to you on behalf of Citizen Whistleblowers Forum (CWF), which is an organisation formed for providing a platform for whistleblowers and to take up their complaints for further action.

From a whistleblower, CWF has come in possession of a copy of the full appraisal report prepared by the CBDT in the Aditya Birla case and a copy of order passed by the Income Tax Settlement Commission (ITSC) in the Sahara case. CWF has also come in possession of authentic copies of the seized documents recovered in the raids on these groups. These documents show systematic bribery of politicians including several Chief Ministers and public servants by these business groups.

From the perusal of the aforesaid documents, CWF has learnt that CBI (in case of Birla) and the Income Tax Department (in case of Sahara) had recovered and seized documents, notes, laptops and huge amounts of cash.

The said documents were analyzed by the IT Department and they show systematic bribery of politicians and civil servants. Despite this evidence the same was not referred to the CBI for a criminal investigation.

The stand taken by the IT Department is recorded in the Appraisal Report and the ITSC order. The same shows that the IT Department had disbelieved the bogus explanations given by Sahara and Birla officers and had held that the documents seized were correct/non-fictitious and depicted the true state of affairs.

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Even as per Section 132(4A) of the Income Tax, 1961, when any books of accounts or other documents are seized, their contents are deemed totreated as true and correct.

Sahara case

In the Sahara case, some of the relevant seized documents are the printouts of the three Excel sheets showing cash receipt of over Rs. 115 crore and cash outflow of over Rs. 113 crores during a short period of 10 months. While the first sheet goes up to 04.03.2014, the others go up to 22.02.2014 and 12.11.2013, respectively. The entries in all the three sheets are tallying with each other. The logs suggest that cash was apparently transferred to several important public figures. The excel sheets show the date of payment, to whom money was paid, the amount paid, through whom it was paid and the place of payment. Therefore, they contain enough information to initiate a thorough investigation.

Before the ITSC, IT Department in the Sahara case, had stated that the documents were true and had argued: "a) On the basis of these seized documents only the assessee firm has voluntarily surrendered income of Rs.1217 crores. b) When Sh. Sachin Pawar was examined in respect of entries recorded by him, certain contradictions were found in his version as discussed in detail in Rule-9 report. In one statement he states that the whole exercise was done to implicate ShriDogra and get him punished from the Management. On the other hand in a later statement he says that he intended to pass on information to various Government agencies like IT, SIT etc. When this was pointed out in 245D(4) hearing it was stated by the AR that second statement was in continuation and in addition to first one. It is obvious to us that there is a direct contradiction here – if information was to be given to IT/SIT, it would not hurt ShriDogra but the entire Management and the Group itself. Also it is correctly pointed out by PCIT that SIT did not even exist at that point of time. c) Perusal of transactions recorded in the seized documents shows that they have been recorded in a detailed manner with specific amounts and names of persons/premises – something that appears to be true. Also, it is observed that so-called 'meaningless' transactions have been recorded on a regular basis over a period of 4-5 years –

contention that it is only for the sake of implicating Shri V S Dogra – seems to be unbelievable. Further, on comparison of the entries of cash receipts as recorded in the seized documents with the entries in the ledger account of cash imprest given to Shri Sachin Pawar from MARCOM, it is observed that all the entries of cash imprest above Rs. 1 crore appearing in the books of Sahara India (MARCOM) in the ledger account of Shri Sachin Pawar have been recorded by Shri Sachin Pawar in the seized documents on the same dates- strongly suggesting thereby that entries made were not fictitious and cannot be called meaningless.”

ITSC, however, in an extreme haste settled the case and shockingly absolved Sahara of all criminal and civil liability on specious grounds. This order of ITSC needs to be challenged by the CBDT by taking out appropriate legal proceedings or by filing a writ petition. In fact, now it has come out from a report in the Indian Express dated 06.01.2017 that as per ROC records, Sahara Group had shown a hugely inflated expenditure to reduce their tax liability. Thus they had not made a complete and true disclosure before the ITSC, and therefore, the order of ITSC ought to be reviewed and set aside.

Birla case

In the Birla case, IT Department interrogated in detail senior officers of the Birla Group, including their DGM (Accounts) Mr. Anand Saxena who made certain startling admissions. IT Department in its report states that “Shri Anand Kumar Saxena in his statement recorded on oath u/s 132(4) of IT Act, 1961 has admitted that the note book marked as Annexure A-1 is written by him in his handwriting and was maintained by him, inter alia, to also record unaccounted cash transactions of the group. The huge cash of approximately Rs. 25 crores seized from the office premises of M/s ABMCPL at 4th floor, UCO Bank Building, Parliament Street, New Delhi was admitted to be unaccounted by Shri Anand Kumar Saxena as the same was not recorded in the regular books of accounts of M/s ABMCPL or any other company. In this context, Shri Anand Kumar Saxena stated that he was custodian of the almirahs in which the cash was kept and also stated that he was in charge of handling cash amounts received at this premises from time to time and keeping it in safe custody.”

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In his interrogation, Mr. Saxena told the IT Department that he was responsible for handling the cash. However, "Mr. Subhendu Amitabh, Group Executive President gives me the direction to receive the cash as well as its disbursal or payment." He also stated that he "received the cash from one person namely Mr. Jaluram in the range of Rs. 50,00,000/- (Rs fifty lacs) approximately..." and said that "Mr. Jaluram is Angadia who are local hawala operators." Mr. Saxena said that "Mostly cash is received in the range of approximately Rs. 50 lakhs to Rs one crore each time. There is no fixed interval. Sometimes we receive twice a day and sometimes there may be a gap of 3-4 days." He further said that "We are instructed by ShriSubhenduAmitabh to disburse or make payment of a particular amount through our senior officers of the company to some persons but the purpose of such disbursal or payment is not communicated to us. The procedure adopted for making the disbursal or payment in cash is such that we can not identify the persons to whom it is paid."

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IT Department in their appraisal report said that transactions were indeed taking place. IT Department stated: "... the following facts clearly emerge from the statement of ShriAnand Kumar Saxena: i) That he used to maintain record of unaccounted transactions for last about 5 years continuously and used to receive unaccounted cash through certain angadias on regular basis and that for this purpose, he used to remain in touch with persons like Shri G K Tulsian, Shri R K Kasliwal and Shri A N Agarwal etc. to receive such cash. ii) That aforesaid persons are employees of different companies of Aditya Birla Group. For example, Shri A N Agarwal is an employee of Ultratech Cements Ltd. And Shri R K Kasliwal is an employee of Hindalco Industries Ltd. The search team found a note book which was seized as Annexure A-1 and contains transactions of such unaccounted cash for period July 2010 to March 2012..."

The Department disbelieved the stand taken by the Group Executive President Mr. Shubhendu Amitabh that the unaccounted cash of Rs. 25 crores seized from the office belongs to him and it was his unaccounted income. The report states: "It is clear from the statement of ShriAnand Kumar Saxena that unaccounted cash used to be received in various

account heads maintained in the names of the Aditya Birla group companies... The claim of ShriShubhendu Amitabh that the unaccounted cash of Rs 25,01,41,100/- seized from the office premise of M/s ABMCPL belong to him and it was his unaccounted income does not seem to be convincing. The unaccounted cash seized during the search action was the balance of the HQ a/c reflected in the seized documents."

The emails seized by the IT Department from the laptop of Mr. Shubhendu Amitabh clearly show evidence of bribery of the officials of Department of Revenue Intelligence (DRI) by the Birla Group. These emails are contained in Volume 3 of the Appraisal Report. These are the emails sent by one Bhuvan Chandra to Mr. Shubhendu Amitabh. Mr. Chandra in these emails is apparently updating on developments in the pending investigation case with DRI involving the Birla Group and is suggesting strategies for the same. Mr. Chandra wrote on 02.01.2013: "DRI officials would support our contentions in Settlement Commission and request for settlement directives." On 07.04.2013, he wrote: "BGH had desired that no other can of worms to be opened and the investigations be restricted to iron ore exports only. Accordingly, the matter was designed, file papers were constructed, approval of all the concerned in DRI was obtained and the matter was proceeded upon. The statements of officers of BGH have also been recorded on those lines only. The investigations have been carried out and moulded in such a manner so as to exhibit that the exports of iron ore alone were only questionable thereby indirectly declaring that there are no other irregularities in the operations of BGH... It was categorically stated that the information DRI has seized has not been shared/given to any other agency including their own other offices... Further all the seized information/documents including computers would be returned to us, then where is the question of other Agencies being able to lay their hands on it. ...As the investigation report has already been seen and clearance accorded from the TOP why would any other matter will get reopened. Sources in DRI hold the view that it is in their own interest that the issue is buried completely after the understanding is executed completely as agreed upon. Therefore there cannot be any bigger guarantee – as they also run the risk of exposure." On 03.05.2013, he wrote: "Accordingly suggest immediate action on delivery of

commitments so that the process of Show Cause can be expedited and the issue is put behind us."

There is an email sent by one id 'asir66554' to Mr. Shubhendu Amitabh on 01.03.2013, which was forwarded by Mr. Amitabh to himself on 13.05.2013. The said email shows certain transactions, which reflect several incriminatory and illicit payments. One sentence reads: "*Mahan matter MOEF- 9cr final. (20 cr) – initially only if Done on 1st March, 2012- in the GoM. OK again by GC on 3rd March @ B'by. Upon completion.*" At the time this email was written, Hindalco Industries, a Birla Group company, was reportedly building a 359 kilo tonne per annum aluminium smelter and a 750 MW power plant which was supposed to draw coal from the Mahan Coal Block located in the Singrauli fields, Madhya Pradesh. There is another entry in the same email that states: "*Verappa M – GC – Cement OPP – CCI report/penalty – 2 cr – OK. Received.*" It is to be noted that the Competition Commission of India (CCI) had imposed a hefty penalty on the Birla Group's cement business unit along with other cement companies. Another entry in the said email states: "*RJM+EC of Jhilling...(10cr). After a lot of beeseeching he agreed to lower it to 2.75 (NO) ultimately come to 3.10 mtr...Mani). Recd 5cr + 5cr.*" Jhilling, Odisha has mines run by M/s Essel, a Birla group company. This email entry is corroborated by entries of payments made for purpose of the "Jhil+RJM" amounting to Rs 5 crores between 26.06.2012 to 07.08.2012. Environmental clearance was reportedly granted for expansion of JillingLanglotalron and Manganese Ore Mining on 07.06.2012.

The records seized during the search operation at Delhi revealed payment or proposed payment of Rs. 7.50 Crore made during the period from 09.01.2012 to 02.02.2012 under the heading "Project-J – Environment & Forest". It is to be noted that during the tenure of the then Minister, Environment & Forest, as many as 13 projects of the Aditya Birla Group companies were cleared by MOEF between 08.11.2011 and 17.06.2013. From the documents seized from the Birla Group, marked as Annexure A-1 by IT Department, certain transactions under account heads 'Carbon Min' were recorded saying "to receive 5 crores". This can be correlated to the grant of coal blocks to Hindalco (a

Birla group company) by the Coal Ministry and further developments relating to those coal blocks.

The laptop of Mr. Shubendu Amitabh was also found to contain evidence of other highly incriminating money transactions. An email dated 16.11.2012 containing a cryptic entry, "Gujarat CM – 25 cr (12 Done- rest?)", was also recovered from the said laptop. When Mr. Amitabh was questioned about this transaction and specifically asked as to what the letters C and M in the above entry stood for, he told the Income Tax Department that "These were purely personal notes. Not meant for SMS or email transmission. And the first note is only to note for my knowledge and consumption – a business development at Gujarat Alkali Chemicals, a company engaged in Caustic soda as well. This was an update for my self knowledge only. Only for personal consumption. As they were personal random notes, I used abbreviations Guj CM- stands for Gujarat Alkali Chemicals... In personal diaries and notings, I use a lot of abbreviations. I cannot vouch for others in my Group. However, you may please note that in this very note-page, I have written 'WEF' twice. In my regular communication through email/sms I might have at least written Gujarat Chemicals or World Eco Forum, but since this was a note for my personal consumption only, I did not expand upon them." It is submitted that the above transaction could have been easily verified by checking the accounts of Gujarat Alkali Chemicals since this has to be a on the book transaction.

The Income Tax Department in its appraisal report dated 27.02.2014 stated: "...considering the highly incriminating nature of transactions in the data retrieved from the laptop and hard disc of ShriShubhendu Amitabh and evasive replies and unsubstantiated claims made by him, it would be imperative for the Assessing Officers to scrutinize the data available in seized documents including the laptop and hard disc and determine the quantum of income concealed by ShriShubhendu Amitabh, M/s ABMCPL, and other persons, if any."

Conclusion

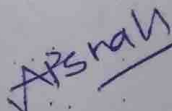
Therefore, the documents recovered in the raids on Sahara and Birla Groups ought to be immediately forwarded to the CBI for a thorough

criminal investigation since they reveal bribery of the politicians and civil servants by these two business groups.

The circumstances make out a more than adequate case for directing a credible and independent investigation as per the law laid down by Constitution Bench of Supreme Court in *Lalita Kumari*, (2014) 2 SCC 1, case. The following facts make out a clear case for criminal investigation: 1) Raids were conducted by the CBI on the Birla Group and by the Income Tax Department on the Sahara Group, 2) Huge unaccounted amounts of cash was recovered in the raids, 3) Diaries, notebook, hand written papers, computer documents were recovered in the raid, 4) The information gathered shows bribery of politicians and civil servants, 5) The persons concerned in the Birla case were interrogated and custodians of cash admitted that they used to receive cash and disburse it on the instructions of the Group President of the Birla Group, and also named the 4 senior officers of Birla who used to take and hand over the cash to specified persons, 6) all the explanations given by the Groups or their officials were rejected by the IT Department since all transactions were tallying with other records and that no person or group fabricates documents to implicate himself or itself.

Therefore, I on behalf of CWF urge you to direct the officers concerned to challenge the order of ITSC by moving appropriate legal proceedings and also to forward the entire record, documents and appraisal report to the CBI for a thorough criminal investigation.

Yours truly,



Justice (Retd.) A. P. Shah
on behalf of
Citizen Whistleblower's Forum