

A Case of Money Laundering in the Education Sector – Analysis of Operational Methodology

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Introduction

For us in the taxation system, the first week of every quarter is always the busiest. Hordes of taxpayers storm the offices of Commissioners, Inland Revenue, for exemption certificates. These certificates are issued by the Commissioner after deposit of taxes in advance by the taxpayers for the whole year so that they wouldn't have to pay withholding tax on any further transactions. It was on one such Monday morning of the first week of January when Maheen Hussain, Commissioner Inland Revenue (CIR), Corporate Regional Office Lahore, was exposed to the notorious world of money laundering.

An education sector company, K-Education (Pvt.) Ltd., applied for exemption from deduction of withholding tax u/s 152(5A) of the Income Tax Ordinance, 2001 (ITO, 2001). The exemption was claimed on remittance of \$49.3 million on account of payment for purchase of 16,700 ordinary shares from NS Mauritius (Pvt.) Ltd., a Mauritius-based non-resident company. The capital gain on sale of shares in the hands of the non-resident company had justifiably been claimed as exempt from withholding tax in terms of Article 13(4) of Double Taxation Treaty executed between Pakistan and Mauritius. On the face of it, there were no red flags. However, a deeper investigation into the case revealed very complicated networks and channels used for money laundering. The weaknesses in the tax system and loopholes in the execution system of double taxation treaties which facilitate these money laundering methodologies also came to surface.

Aim of this Case Study

This study aims to expose how an apparently routine education sector case put up for exemption from withholding tax turned out to be linked to a massive money laundering network of shell companies when probed deep enough. The case study discusses loopholes in the tax system and in double taxation treaties and how money launderers take advantage of these loopholes. It also suggests the way forward for the Federal Government to plug the same. Another important aspect which is discussed was the dilemma faced by the Commissioner in charge who kept moving on with the investigation while handling extreme external pressure to stop further enquiry into the matter.

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Statement of the Problem

Tax evasion is rampant in Pakistan. It is one of the major sources of black money which is then laundered by big businesses, sometimes belonging to seemingly kosher and unsuspected sectors like education. It is then re-injected back into the company's capital as white money after routing it through a network of shell companies and bank accounts. These money laundering practices are also facilitated by weaknesses and loopholes in the tax system in Pakistan which hurt the economy in a big way.

Key Question

What is the operational methodology used by an apparently unsuspected business enterprise in the education sector used for money laundering and the loopholes/weaknesses present in our tax system which facilitate such money laundering methods?

Section I

Facts of the Case

Kashif, an Inspector of the Commissioner Inland Revenue,² placed a file on top of the pile of files with the words, “Madam, please have a look at this file first. The CA firm has requested for the early processing of the exemption certificate as they have to make payment to a non-resident company for purchase of shares,” he said with his signature smile.

“Kashif, will these ever end? I have decided dozens of these exemptions already!” the CIR responded with a rhetorical question.

He smiled and left the room. The CIR put the coffee mug aside thinking that enough caffeine had already been pumped into her system to get her through at least the first half of the day. Then she picked up the file. Shoving files and papers aside, she made room for this file and started with page 1 of the correspondence side of the file. After 15 minutes of going through the file, she realized it was not her routine exemption file. Usually, the exemption was to be issued on imports or local sales. Under the system, the taxpayer having paid the due withholding tax(es) in advance, applies for exemption from further withholding during the rest of the year. But in this case, transaction of money was not on account of sale or purchase of raw materials or finished goods; instead, it was in connection with payment being made for purchase of shares from a non-resident company.

² Inspectors are the “non-gazetted” rank and file employees who rarely rise to become “officers” – individuals who are selected through the civil service examination.

As this was an unusual case, she had to brush up her tax law skills. She picked up the 'bare acts' book³ and opened the concerned section. Section 152 of the Income Tax Ordinance, 2001 required deduction of advance tax when a payment is made to a non-resident. In the instant case, an education sector company, K-Education (Pvt.) Ltd., had made an agreement to purchase shares from a Mauritius-based non-resident⁴ company, NS Mauritius (Pvt.) Ltd. However, Article 13(4) of the Double Taxation Treaty between Pakistan and Mauritius clearly provided that the capital gain arising to the seller company will be taxed in its country of residence.⁵ Apparently, everything looked fine according to the law. There was no reason to reject this exemption request. But, deep down, she had a gut feeling that there was something more about this case. Though she did not have the answers yet, her proverbial gut had never cheated her before. She had only 30 days to decide after which the exemption would automatically be allowed by the system under Section 152(5A) of ITO, 2001.

As the first thing a tax officer checks for in such transactions is the source of funds. She scoured tax records of K-Education for a clue regarding the source of funding. It didn't take her long to see that an interest free loan of Rs. 6.97 billion (equivalent to \$49.3 million) was extended to K-Education by another education sector company, Learning Services (Pvt.) Ltd. for purchase of these shares. "That's huge!" she said to herself. This fact itself raised the first red flag. Two education companies, one giving big money, free of cost, to the other to buy shares from a non-resident company! One thing her training over the years as a tax officer had taught her was to slow things down to a micro level whenever a red flag popped up and then replay these. And so it was, she replayed everything.

Something did not add up. Businessmen make wise choices. They don't spend until they hope to make a lot more from their spending. So, what was in it for the loaning business entity? A little more digging and she realized that the directors of both K-Education and Learning Services were the same. So, they were associate companies,⁶ 'sister concerns' as we call them. But why didn't Learning Services purchase these shares directly? Why use K-Education Pvt. Ltd.?

Her hunch had been right. This was not her routine tax exemption case. She rang the bell and asked her peon to get Kashif.

"Yes, ma'am," Kashif raced in with another bundle of files.

"Kashif, please ask the chartered accountancy firm people to come in tomorrow. I'd like to take this file home and do some research." The case was represented by one of the three top chartered accountant firms in Pakistan.

³ In legal parlance, a collection of the texts of the laws and not a book that has interpretations of such laws.

⁴ Section 83 of ITO, 2001.

⁵ Article 13(4), Convention Between Islamic Republic of Pakistan and The Republic of Mauritius for the Avoidance of Double Taxation and The Prevention of Fiscal Evasion with respect to Taxes on Income.

⁶ Section 85(3)(f) of ITO, 2001.

“Right, ma’am,” he replied and raced back out.

The CIR had already studied K-Education (Pvt.) Ltd. Now, it was the turn of Learning Services. It was all thanks to technology that Federal Board of Revenue (FBR) officers could now study tax returns and audited accounts of any taxpayer registered with the FBR online. Though tired, she downloaded returns of last ten years along with audited accounts. The day ended. She got back home and had her dinner early in her room. She then unfolded her decade-old laptop and placed the file before her, feeling a little excited to work over this case.

She started with the latest year’s return of Learning Services (Pvt.) Ltd. Hours passed and she still couldn’t find anything unusual. She was about to wrap things up when she saw sale of shares in audited accounts of year 2008. With droopy eyelids, she delved a bit further into the audited accounts and *voila!* Years ago, Learning Services had sold its 17,600 ordinary shares to a Mauritius-based company, NS Jhelum for \$27.5 million. This non-resident company later on changed its name to NS Mauritius from which the same shares were now being purchased for \$49.3 million by K-Education. The intended amount of remittance, \$49.297 million, was inclusive of capital gain as per following break-up:

Table 4: Capital Gain to NS Mauritius (Pvt) Ltd.

Sale price of shares sold by Learning Services – A	\$49.297 (M)
Purchase price of shares to be purchased by K-Education – B	\$27.500 (M)
Capital gain on sale of shares (A – B)	\$21.797 (M)

Simply put, Learning Services sold its shares to a non-resident company years ago and was now buying its own shares back through a sister company at almost double the cost. New questions popped up in her mind. Does the company want to evade tax on some transactions or does it want to park illicit money at an offshore location? This kept on getting more and more interesting. She decided to call it a night because now she needed to have a meeting with the taxpayer’s consultants from the accountancy firm. Only they could fill in the blanks here or maybe they’ll create more blanks. She dozed off with these thoughts in her head.

The next morning, the CIR had excitedly started discussing her findings with her Inspector, Kashif, when the peon brought the card of the consultant representing the interesting new case. This was the visiting card of the partner of the accountancy firm. *No doubt, big money meant big guns.* She thought to herself while putting the file aside and motioning the peon to let the consultant in. After exchange of pleasantries, the consultant started discussing the details of the case. She patiently let him explain what she already knew about the case. When he was done, she bluntly asked him one question that had piqued her interest the most in this situation.

“Why is Learning Services giving K-Education the money to buy back its own shares at almost twice the price it had sold few years back?”

His eyes widened for a brief moment and he went all quiet. Either he was not expecting the department to dig this deep this soon or he was not expecting her to get so straightforward at the first hearing. He took a moment and then resumed talking.

“Madam, as per the operative laws of our country, this transaction is not illegal. And you will notice that the capital gain made by the non-resident company ensuing from the sale of shares in this case cannot be taxed in Pakistan under the double taxation treaty signed between Pakistan and Mauritius,” he said this while placing a bundle of pages before her with parts of it highlighted for the reader’s convenience.

She had already gone through the treaty contents. He was right. The gain arising out of this transaction was to be taxed in the country where the alienating (or selling) party was a resident in the year. In simple words, since the selling company had no footprint in Pakistan, we could not tax its capital gain. The law was clear. She knew this from all her file reading last night so she had no intention of dragging the case on this point. A voice at the back of her head was telling her to explore more, may be in some other areas.

The hours passed by and evening caught up with the afternoon. In no time, she found herself staring out of the window of her more than twelve years old *sarkari*⁷ Cultus as her driver honked and meandered his way through the busy Lytton road. Everything was cold and grey. It had started drizzling before she reached home.

After a quick early dinner, she found herself in her study chair with the same file opened before her, a cup of coffee with rising twists and twirls of white steam to her left and her laptop to her right, picking the file from where she had left off yesterday. For the next few days, she held various meetings with the representatives of the applicant company while trying to bring further clarity to the matter at hand and requiring various documents from the taxpayer. The summary of the proceedings was now placed in front of her in a tabular form.

⁷ “*sarkar*” is an Urdu word with many connotations; however, in simple meaning it means the government and *sarkari* means official.

Table 5: Summary of the Proceedings

Documents Requisitioned	Rationale	Reply of the Taxpayer
Audited Accounts of NS Mauritius (Pvt.) Ltd.	To verify declaration of income/ investment with Mauritius Tax Authorities	Not provided with the contention that non-resident person is not required to submit the same u/s 83 of the Income Tax Ordinance, 2001
Name of the Directors of NS Mauritius and their nationalities	To examine if there is any connection with the Directors of K- Education and Learning Services (Pvt.) Ltd.	-do-
Copy of share subscription agreement executed between NS Jhelum (Pvt.) Ltd., [now renamed as NS Mauritius (Pvt.) Ltd.] and Learning Services (Pvt.) Ltd.	To examine the terms and condition of the agreement between NS Jhelum (Pvt.) Ltd., (now renamed NS Mauritius) and Learning Services (Pvt.) Ltd.	Provided after persistent inquiries through numerous meetings and correspondence
Mode of valuation and authority determining the value of shares	The shares being purchased constituted 70% of book value of Education Services (Pvt.) Ltd. On the contrary, it constituted 25% of net assets of the company when they were sold to NS Jhelum (Pvt.) Ltd., now renamed as NS Mauritius	Not provided and reiterated that the valuation was duly verified and endorsed by the State Bank of Pakistan while issuing approval for remittance of the amount

During the proceedings, it was disclosed that \$27.5 million had already been remitted with the approval of State Bank of Pakistan without any intimation/approval from the Commissioner Inland Revenue.

Section II

Case Analysis

2.1 Tax Evasion and Tax Avoidance

“*Tax evasion*” and “*tax avoidance*” are two interesting concepts in taxation. These terms are entwined and yet have their individual existence. **Tax evasion** is defined as the act of reducing or minimizing the amount of tax liability by using illegal methods⁸ whereas **tax avoidance** is management of one’s financial affairs to minimize the liability within the law.⁹ While there is absolutely no tolerance for tax evasion before the eyes of law, unfortunately, tax avoidance schemes are run in the widely available grey areas. Tax consultants and lawyers identify weak areas of taxation laws and abuse these grey areas. Over the years, states identify these grey areas and make stronger and more definite, all-encompassing legislations. But this takes time as laws mature over decades when new scenarios come to light and are adjudicated upon by the courts. In the absence of legislation, enforcement agencies cannot do much and courts almost always give relief to the petitioners. One reason she wanted to dig deep into this case was to at least clearly identify such loopholes and try to get these plugged once and for all for future tax avoiders.

2.2 Red Flags

The Income Tax Ordinance when read with the relevant treaty did provide cover to the transaction. But there were red flags and it was time to pen these down one by one.

2.2.1 Valuation of Shares

At the time of original sale of shares by Learning Services, the value of the shares was 25% of the net book value of the company’s assets. For ease of understanding, “book value” is the net value of a company's assets found on its balance sheet as recorded in the books of accounts.¹⁰ However, at the time of purchase of shares by K-Education, the same shares constituted 70% of the net book value of the Learning Services’ assets. Therefore, the sale price seemed exuberantly high and that also without being evaluated by any independent authority.

2.2.2 No Regulations for Evaluation of Intrinsic Value of Shares

There are various concepts of valuation of shares in accounting. Two are particularly important. One is book value as explained above and the other is intrinsic value. The latter “**intrinsic value**” is a rather complex concept. As discussed earlier, the taxpayer

⁸ <https://www.collinsdictionary.com/dictionary/english/tax-evasion>, accessed on December 10, 2020.

⁹ www.Dictionary.com, accessed on December 10, 2020.

¹⁰ www.investopedia.com, accessed on December 10, 2020.

was required to clarify as to what was the mode of evaluation of shares to be sold by NS Mauritius. In response, the taxpayer contended that the sale value was in fact the intrinsic value of the shares. **Intrinsic value** may also be differentiated from the **market value** which is a company's worth based on the total value of its outstanding shares in the market¹¹ whereas the intrinsic value is the actual and true worth of these assets estimated through the use of fundamental and technical financial techniques.¹²

After spending an hour with the audited accounts of K-Education (Pvt.) Ltd. and its share purchase agreement with NS Mauritius and State Bank of Pakistan's regulations, the following revelation came to light: *There were no regulations in the country for evaluation of intrinsic value.*

If the relevant authorities had framed regulations for ascertaining intrinsic value, this would become increasingly difficult for the tax avoiders to take advantage of this gap.

2.2.3 Treaty Shopping

The capital gain arising to the non-resident company was to be remitted without being taxed in Pakistan as per Double Taxation Treaty (DTT) provisions between Pakistan and Mauritius. But interestingly, when the Mauritius Income Tax Act 1995 was consulted, there was no provision to tax the capital gain in Mauritius.¹³ Therefore, in the instant case, due to a good **treaty shopping** facility available, the money would remain untaxed in Pakistan as well as in Mauritius.

2.2.4 Transactions Between Associate Companies

The next red flag obviously was K-Education and Learning Services being associate companies having the same directors. Learning Services which had sold its shares to the non-resident company had also given a huge amount as **interest-free loan** to K-Education, a sister company to buy back the same shares.

2.2.5 Part of the Amount Already Remitted

Another red flag surfaced during the proceeding was that out of total amount of \$49.3 million, an amount of \$27.5 million had already been remitted, having been approved by State Bank of Pakistan without the prior approval/intimation to the CIR. There was, thus, a total lack of communication between two prime state agencies involved in such transactions, i.e. the FBR and SBP.

¹¹ www.investopedia.com, accessed on December 10, 2020.

¹² www.investopedia.com, accessed on December 10, 2020.

¹³ Mauritius Fiscal Guide, KPMG, 2017-18, page 4.

Section III

Money, Politics and Education Business

So, this was what the CIR knew so far. Learning Services, an education sector private limited company wants to buy back its own shares from a foreign company NS Mauritius through K-Education (Pvt.) Ltd. A huge sum of about seven billion rupees was given to K-Education for this purpose as an interest-free loan. “*These education businesses must be minting money,*” she wondered to herself. Her initial investigation had revealed that they were sister concerns because of common directorship. But, the real question was who were these directors? She opened the relevant form of both companies’ incorporation documents. They belonged to the same family. Makes sense. Private limited companies are usually incorporated by family members to keep the shareholding within the family. But this last name of the directors rang some sort of a bell. Was this not a renowned political family running a big business of school education system? She googled to confirm. No sooner had the search engine presented her with its finding that she heard her phone ringing. With one eye on the screen, she answered the phone.

“Maheen, are you still in office?” asked a familiar voice.

It took her a moment to realize that it was the Chief Commissioner, her boss. “No, Sir, it is well past office hours. I left at 5 p.m. Is everything ok?” She glanced at the screen to see if he was calling from his landline, which he was. It must be important if he is still in office and offered no pleasantries as is usually his style.

“Maheen, you have a case. K-Education (Pvt.) Ltd. Why is its exemption request still pending?” His voice was a little tense.

“Sir, I am working on it. We only received the application a few days back and a lot of revenue is involved. It will take some time,” she responded plainly, as her eyes were now staring at the laptop screen. The directors indeed belonged to a very powerful political family. So many thoughts passed through her mind hidden under three words: politics, money and education business.

She heard her boss saying something again. “Well, it is a high-profile case. Chairman FBR has personally asked to expedite this case. Please discuss this case with me first thing in the morning.”

“Right, Sir. I will,” she said with new thoughts rushing in her head. *These are quasi-judicial proceedings. No one should be interfering to influence the final decision.* The stakes had just gotten higher. She had always hated it when someone interfered in her case proceedings.

This was a big case. About fifty million dollars were to be remitted outside Pakistan, equivalent to almost seven billion rupees. The tax on such a huge sum would also be in billions. “I have to prepare the case well. For both scenarios: issuance or rejection of exemption certificate,” she thought.

Putting the phone aside, she got back to work picking up the trail of thought from where the phone call had interjected it. The one thing that she was certain about was that this transaction could not be brought directly into the ambit of taxation laws. Having neatly jotted down all the points, she glanced at the wall clock. It was almost three in the morning. Sleepy but excited, she called it a night.

It was 9:00 in the morning. Her phone rang. It was her boss.

“Maheen, where are you?” he asked with a mixture of tension and displeasure.

“Sir, I am sorry. I overslept. Was studying the K-Education file till late night. I’ll be at work within half an hour and will brief you about what I found,” she replied.

“Please hurry and come straight to my office,” he said and hung up.

Exactly thirty minutes later, she reached office and headed straight to the Chief’s office as directed.

“Morning sir, sorry for the delay,” she said as soon as she entered his office. Putting the file next to her, she sat right across the Chief. “Is everything okay sir, you sounded rather tense on the phone?” she asked.

“Maheen, this is not your usual case, big people are behind it. Are you planning on rejecting this exemption?” he asked without replying to her query directly.

“Sir, I have made a brief of the case. Let’s go through the facts first,” she said while placing the brief before him.

He put on his specs and started reading without saying another word. After fifteen minutes of reading and explaining and going through the relevant documents, he was more concerned than before.

“Sir, I have just explained the details of the case to you. There are many red flags and billions of rupees’ worth of revenue is involved. Even otherwise, it appears like a case of money laundering. I need some more time to collect enough information to connect the dots,” she replied completely ignoring the anxious undercurrent in his voice.

“Try to understand Maheen. There are very powerful people behind this case and if the share purchase agreement is genuine, the money is actually being remitted outside and

the treaty covers this transaction as exempted, what is stopping you from issuing this exemption certificate?” he asked in a tone that was both firm and confident now.

Truth be told, she had asked herself the same question a million times for the past two days. She had tried to answer herself honestly, and so it was that she produced the same answer before her boss.

“Sir, it is definitely very convenient for me to take the easier route. But I believe that we, the Inland Revenue officers, are not only the enforcers and collectors of revenue but we are also custodians of the revenue frontiers of our country. Our duty is deeply linked to the overall economic well-being of state and society. If we see a transaction, which dangerously teeters close to the domain of anti-money laundering laws, should we just close our eyes and investigate it to the extent of our jurisdiction only? Would it be doing justice to our duty as a civil servant? Sir, I intend to request for more time to further investigate, prepare a report accordingly and forward it to the concerned authorities. With your permission, of course,” she finished her retort on a signature *sarkari mulazim* phrase.

He stared at her for a while without saying anything and then reclined into his chair, “Fine, Maheen, dig as deep as you want and prepare your case. If I am convinced, I’ll forward it to the authorities concerned. Meanwhile, I’ll talk to FBR Member Policy and seek his guidance on the matter,” he said.

She knew the meeting had come to an end. She picked up the file and left the room. Once back in her office, she asked her peon to bring Kashif in. Moments later, Kashif was seated before her with his serious mode on. She shared all the findings of last night and what had happened in the Chief’s office in the morning.

“So, what have you thought, madam?” he asked.

“I don’t know, Kashif. I know that legally, there is little we can do. But sometimes our duty calls for more. It is not our routine tax case, Kashif. We work day in and day out for every single penny of tax that we can collect. How can I let this money go, money that could build hospitals, schools and roads? Money that our country so badly needs. Money that we borrow and are never able to pay off, so we borrow more. Knowing all this, how can I let go of this money,” she concluded the sentence and felt a wave of warmth sweeping through her heart. She felt confident and convinced.

Kashif had listened to all of this intently and quietly.

The CIR had known Kashif for two years now. He was in his early forties but his time in the department had led him years ahead of his age. He was professionally sound and also the most trustworthy staff member of the Commissioner’s office.

“Well, if we are going down that road, we better be prepared. Armed to the teeth,” said Kashif, after a long pause with a thoughtful look on his face. Now, they had to investigate further and make a strong case before the Chief Commissioner.

A moment later, Kashif had left the room with what once was just an interesting file. Now, it was the most important file in the office. The large banyan tree outside the window moved slightly. The Commissioner’s office was on the fourth floor of a huge building built sometime in the 1960s. Having withstood more than half a century, the building still stood tall in the heart of Lahore near the famous Old Anarkali bazaar. The banyan tree was old and wide too. Its branches gnarly and twisted. They reminded her of the impossibly intricate network of transactions that go through money laundering nexuses. She knew such channels were very hard to trace even when there were international treaties between countries to counter and check such transactions. But once such transactions had become doubtful, how could one let the revenue go without probing hard enough. Especially in these times when money laundering and tax evasion had eaten the very foundations of the country’s economy.

Section IV

More Investigation, More Clues

The CIR got to the office earlier than usual to work on the pending files from the previous few days so that she could focus entirely on ‘the file’. Kashif had been working on the file for the past few days.

“Madam, you were right all the time. This definitely seems to be a classic case of money laundering,” said Kashif after ensuring the door was closed behind him.

“OK. What do you mean?” she asked, her heartbeat and excitement levels both rising. “Let’s rewind things, in slow-motion mode. Since the beginning, we have been wondering why one education sector company would give an interest-free loan to another education sector company to buy back its own shares from an offshore company which begs the question: why not buy its own shares directly? It makes no sense. Or does it?”

4.1 Stages of Money Laundering

“There are various methods to launder money, each having a certain level of complexity associated with it.¹⁴ Nonetheless, in a classic case of money laundering, three interlinked stages can always be identified, i.e. placement, layering and integration. In the **placement** stage, the process starts with the physical placement of

¹⁴ Waseem Ahmad Qureshi, “An Overview of Money Laundering in Pakistan and Worldwide: Causes Methods, and Socioeconomic Effects”, *University of Bologna Law Review* 2, no. 2(February 11, 2018): 300-345

black money in the financial infrastructure which may be done through investment in financial and non-financial assets. In **layering** stage, the finance managers conceal the source of money through a seemingly infinite number of transactions, bank accounts and book keeping tricks to the extent that it becomes virtually impossible to trace back to the origin of the money. The **integration** of money is the phase where laundered money is brought into the economy, usually through the banking system.¹⁵ The money trail has just started,” Kashif explained.

“So, if I apply these three stages to this case, original investment of \$27 million would have been the out of books profits of Learning Services accumulated through tax evasion. You know how these education businesses earn huge profits and under declare these profits to evade tax. This money would have then been *placed* outside the country through undocumented means to be later on brought back as investment through a shell company. The next step would have been to change the name of the shell company, create a new sister concern in Pakistan and give a huge interest free loan to this sister concern to undertake further transactions. This would be the start of *layering* stage. Next comes the *integration* of this money in the books of the company in the shape of foreign investment and apparently now the applicant company wants to reinitiate this cycle of money laundering by remitting an exorbitant amount for purchase of the same shares,” the CIR said connecting the dots.

4.2 Link with Panama Leaks/Network of Shell Companies

“Madam, remember Mr. Satish Lalani, the main shareholder of NS Mauritius who signed the share purchase agreement with K-Education?” Kashif asked.

“What are you getting at, Kashif?” The CIR knew he had found something that she had missed.

“As per ICIJ¹⁶ investigations, Satish Lalani is linked with five offshore entities that have appeared in Panama Leaks,” he said. His voice hushed and guarded.

“What?” she said after an awkward pause.

“There is more, madam,” Kashif said with a stern expression on his face. “The money is not going to Mauritius as it should be as per the share purchase agreement.”

“Then where is it going?” asked the CIR.

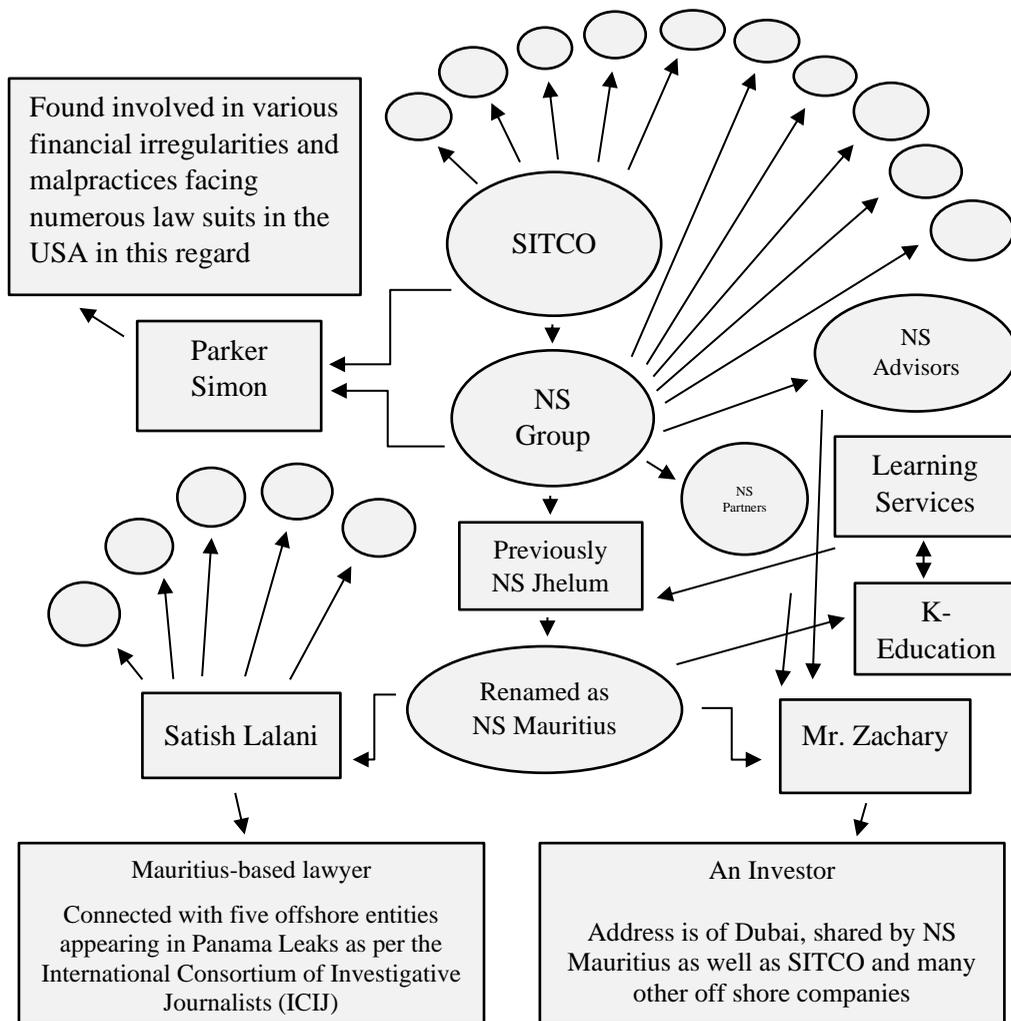
“To an account in New York. The money already remitted has gone to the same account,” he replied.

¹⁵ Ashley Williams, “3 Stages of money laundering – How AML screening guards your business”, Shufti Pro, online blog, July 10, 2019.

¹⁶ The now well-known International Consortium of Investigative Journalists that revealed the Panama Papers and is now behind the Pandora Leaks.

“Hmm. Let me guess. There is more?” she asked with a bland expression on her face. “Yes, madam. The address of NS Mauritius given on the share purchase agreement is that of one of Mr. Zachary, an investor, c/o SITCO (Mauritius) Ltd. His official address as per the agreement is Shangri-La Hotel Office Tower, Dubai, UAE. Same address is being used by a number of offshore companies managed under NS Group of Companies having offices all over the world. However, the top man is Mr. Parker Simon who manages the network of all these offshore companies through SITCO (Mauritius) Ltd. Mr. Parker Simon is also involved in various financial irregularities and is facing multiple law suits in the USA.”

“Let me try to explain this network using a flow chart,” he responded.



“Hmm. So, even though we know a little more about a lot more now, we at least are sure that this particular transaction is not as simple as the taxpayer would have us believe,” the CIR mused as she relaxed back in her chair.

“Yes, madam. And that’s what I meant when I said this is just the beginning of the transaction. The money, most probably, will be routed to other countries as well. We may never get to the bottom of the whole mystery as to where would the transaction culminate and for what purpose is the money being remitted but it surely is not payment for purchase of shares,” said Kashif in an agreeing tone.

“Very well, Kashif, let us now prepare a presentation. We’ll discuss this with the Chief Commissioner in the afternoon,” she said in a concluding tone.

4.3 Interactions with the High-ups

4.3.1 Presentation to the Chief Commissioner

Hours later, the CIR was sitting in the huge office of the Chief Commissioner with Kashif beside her, all ready to share this confounding information with the Chief. The Chief did not utter a single word throughout the presentation, his eyes focused on every single slide.

“There are indeed multiple red flags and serious risk areas, Maheen,” the Chief said, once the lights were switched back on.

“You’re right, sir. That’s why I intend to write to the Board (FBR) for condoning the time limitation in this case as it is a special case and requires detailed investigation,” said the CIR.

She took her leave from the Chief and walked up to her office. Once again, she called Kashif and asked him to prepare a letter, through proper channel, requesting Member Operations for condonation of time limitation in the instant case as well as obtaining following information through International Taxes Wing from the tax authorities of Mauritius so that the case may be proceeded in accordance with the law.

- (i) Status of NS Mauritius (Pvt.) Ltd. previously named as NS Jhelum (Pvt.) Ltd. whether incorporated in Mauritius or a permanent establishment of another company.
- (ii) Names and nationalities of directors of the NS Mauritius (Pvt.) Ltd.
- (iii) Detail of shareholders of the NS Mauritius (Pvt.) Ltd.
- (iv) Tax returns for the last 10 years along with audited accounts in respect of NS Mauritius (Pvt.) Ltd.

- (v) Details of directors of the SITCO (Mauritius) Ltd., the company, NS Mauritius is sharing the address with.

Kashif hastily scribbled the dictation and left the room.

4.3.2 Consultation with the Member Policy

The next morning, the CIR presented the Chief with a copy of the letter. The Chief gave it a cursory reading and approved it with a slight nod of his head. The Chief then picked up his phone and called Member Policy's office. Member Policy was not only an honest officer and a thorough professional but was also very close to the Chairman. "The Member has agreed with the condonation request but he recommends to tread very carefully in this case as very influential people are involved and there may be some serious repercussion for both of us. Nevertheless, Member Policy has promised to arrange a meeting with the Chairman. Maheen, prepare a detailed presentation. We might be travelling to the capital very soon," said the Chief.

4.3.3 Meeting with the Chairman

The CIR could barely sleep that night. She got up early and double-checked the files and essential auxiliary documents. A couple of days later, she was sitting on the opposite side of a huge mahogany table with the Chief Commissioner seated beside her in the FBR headquarters. The Chairman was in the committee room attending an important meeting with a delegation from the Chamber of Commerce. Moments later, the committee room door flung open and the Chairman entered the room.

"Should I begin the presentation, sir?" asked the CIR after the exchange of pleasantries. "No, Madam. There is no need for further elaboration. Member Policy has explained the case to me already. Just bear in your mind before you make any decision that these things have a way of firing back at you. Right now, I have an important meeting to attend at the Prime Minister's office," he said.

With these words, he rang the bell, motioned his peons to pick up his files and bag and left the room.

"Well, that was unexpected," the CIR thought to herself.

Her journey back home was filled with even more anxiety than had been her journey to the FBR headquarters.

A few more days passed and condonation for time limitation was still being awaited despite several calls and reminders, so was the information requested to be obtained for tax authorities in Mauritius.

It was the last day to decide the case. In desperation, she called the Chief Commissioner. “Sir, we have not been granted condonation and there are merely a few hours left in the day to pass an order. If I do not decide today, the taxpayer will be given automatic exemption by the system,” said CIR.

“I know, Maheen. But it’s your call. I would not interfere with your decision although there might be consequences for both of us.”

Once back in her office, the CIR went through the contents of the file again. Though the information requested from tax authorities of Mauritius through FBR was not yet received, there were still enough red flags to reject this exemption. She felt confident. It was time to prepare a detailed report enumerating all the red flags along with relevant documents as annexures to be sent to the Chairman FBR through proper channel and upload the rejection order on to the system. Signing the rejection order felt like lifting a huge baggage from her shoulders despite a lingering fear of the unknown. The drive back home was a mixture of both satisfaction and anxiety.

Days passed. And soon, weeks and months. It was business as usual. K-Education paid the due tax and never applied for a review or appeal in the court against the rejection order. Both CIR as well as the Chief Commissioner remained posted in the same positions. Nothing was yet heard about any action regarding the suspected money laundering case. Many a times she felt an urge to pursue the case again with the board but a voice in her head told her not to. She knew that she may never come to know why higher authorities in the FBR, despite having a reputation of being very professional, showed such complacency in this case: whether it was political pressure or some fiscal policy exigencies like preventing any negative signals to the prospective genuine foreign investors. Nevertheless, she had done whatever she was supposed to do at her level. She had also sent to the board proposals pinpointing weaknesses in the tax system and the need to revisit double taxation treaties signed with certain countries known as tax havens. She had saved billions of rupees’ worth of revenue too. However, not all the stories turn out as expected. It was half a win for her or half a loss. But she chose to look at it as half a win.

Section V

Conclusion, Lesson Learned, Recommendations

In conclusion, although no action had yet been taken in the light of the Commissioner’s report regarding the suspected money laundering but a huge amount of revenue had been recovered due to her independent decision based entirely on merit and good faith. It was also an enormous learning and growing experience for her as to how a seemingly simple case can take a very unexpected turn. Likewise, her expectation, that the higher authorities would be as enthusiastic about the outcome of her investigations as she herself was, also proved wrong. Nonetheless, her persistence and hard work made a

huge difference in terms of safeguarding revenue despite being warned about the serious repercussions. The matter lingered for a whole month but she showed forbearance and perseverance. She kept working on the case and also sent the report to the FBR bearing all the facts and red flags in the instant case as well as proposals to plug the loopholes in the tax system and double taxation treaties, thus, doing what was the right thing to do on her part.

The crux of the story is that we, as civil servants, need to be vigilant as well as persistent in the exercise of our official duties even in the face of adversity and threat of grave consequences. Even if individually, we act responsibly and do the right thing, we can make a difference in one way or the other. Though there would be some failures along the way, but these should not stop us from taking tough decisions in the right direction rather than opting for the easier route.

Recommendations

- (i) There is a need to re-visit the double taxation treaties including DTT with Mauritius in order to remove the grey areas facilitating tax evasion. In the case of Mauritius, India had already revised its double taxation treaty between the two countries.
- (ii) Other identical cases, using same methodology for money laundering, may also be identified and examined in other field formations.
- (iii) Presently, Commissioner Inland Revenue has only 30 days to decide the exemption cases. This authority to condone time limitation should be delegated to the Chief Commissioner instead of Member Operations in cases warranting more time for investigation. An amendment in the Income Tax Rules, 2002 should be made accordingly.
- (iv) The lengthy and cumbersome process for obtaining information from a foreign country through Directorate General of International Taxes also needs improvement. Empowering Commissioners or Chief Commissioners to get this information directly from foreign countries under intimation to the superior offices would make the process much simpler.
- (v) A memorandum of understanding should be signed between the agencies like the State Bank of Pakistan, the Federal Board of Revenue, and Securities and Exchange Commission of Pakistan for swift and instant sharing of information. This may be done through developing a single shared portal allowing access to the authorized persons only.
- (vi) A task force of above authorities and other concerned departments should be constituted for examining double taxation treaties in light of existing

international best practices in order to identify loopholes facilitating money launderers.

- (vii)** Rules should be framed to make chartered accountancy firms responsible and even liable to criminal negligence if they are found facilitating their clients in using money laundering methodologies.
- (viii)** Proper regulations should be framed and officially notified by the State Bank of Pakistan for calculation of intrinsic value of assets so that money laundering networks may be restrained from parking illicitly obtained funds abroad.

Bibliography

Income Tax Ordinance, 2001.

Convention Between Islamic Republic of Pakistan and the Republic of Mauritius for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (Double Taxation Treaty between Pakistan and Mauritius).

Mauritius Income Tax Act, 1995.

Mauritius Fiscal Guide, KPMG, 2017-18.

Ashley, Williams. “3 Stages of money laundering – How AML screening guards your business.” Shufti Pro, online blog, July 10, 2019.

Waseem Ahmad Qureshi, “An Overview of Money Laundering in Pakistan and Worldwide: Causes Methods, and Socioeconomic Effects,” *University of Bologna Law Review* 2, no. 2 (February 11, 2018).