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F.No.71/07-Law (FTO)
Government of Pakistan
Law & Justice Division

Islamabad, the 15th March 2007.

From: Azhar Amin Choudhary,
Section Officer

To: The Secretary (TO-I),
Revenue Division,
Central Board of Revenue,
Islamabad

Subject: REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX OMBUDSMAN COMPLAINT NO.494/07

Sir,

I am directed to refer to your representation No. C.No.4 (494)TO-I/2007 dated 28.07.2007 on the above subject and to say that the President has been pleased to pass the following orders: -

2. For its project "Access to Justice" the Ministry of Law and Justice has hired the complainant as Consultant. On the query of the project Management the Commissioner of Income Tax vide letter dated 2.4.2007 informed the Management that the complainant's receipts were his salary to be taxed accordingly. The complainant made complaint to the FTO. His case is that his receipts from the Ministry/Management are not salary but remuneration for the services he renders to be taxed finally at the rate of 6% under section 153 of the Income Tax Ordinance 2001. After investigating the complaint the FTO has found that the complainant is not an employee of the Ministry/Management. He is rendering services to the Management attracting the application of the section 153 ibid. Accordingly the FTO has recommended that Secretary Revenue Division should within 30 days of the receipt of these recommendations and in supersession of earlier instructions/clarifications etc ensure issuance of a clarification to Program Director Access to Justice Program that tax be withheld in complainant's case @ 6% of the gross receipts.

3. The Revenue Division has made representation against the FTO's recommendation. The complainant has furnished written comments on the representation.

4. The precise question that arises in this case is: What is the proper head of income of the complainant's receipts from the Ministry of Law/Management? Are they salary from employment or earnings from profession or business? It is obvious that the nature of the work one does is not relevant. An employee medical doctor does the same work which a private medical practitioner does. The earnings of the first are salary and of the latter income from profession/business.

5. For the benefit of the complainant it may be pointed out that the role of the FTO is to identify maladministration and not to provide appeal against the decision of the Revenue Division or a tax employee. Maladministration connotes some misbehaviour such as bias, neglect, inattention, delay, incompetence, ineptitude, and arbitrariness. The FTO is not authorized to question merits of a decision taken without maladministration. There is a clear distinction between a decision tainted by maladministration, which the FTO may question, and unmeritorious decision, reached without maladministration, which he may not [Administrative Law by Sir William Wade 2000 pp. 95-96]. In addition to the above stated general bar there is specific bar [section 9 (2) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000] against the FTO to investigate or inquire into matter which relate to determination of tax liability and interpretation of law, rules and regulations relating to such determination in respect of which legal remedies of appeal, review are available under the tax law.

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