

F.No.173/06-Law (FTO)
Government of Pakistan
Law and Justice Division

Islamabad, the 31st January 2008.

From: Azhar Amin Choudhary,
Section Officer

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

Subject: **REPRESENTATION UNDER SECTION 32 OF ORDINANCE OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX OMBUDSMAN IN COMPLAINT NO. 647-L/2006**

Sir,

I am directed to refer to your representation No. C.No.4 (647) TO-I/06, dated 14.09.2006 on the above subject and to say that the President has been pleased to pass the following orders:-

2. As per declared version for the assessment years 1997-98, 1998-99 and 1999-2000 the amount of tax paid by the complainant, or on his behalf, exceeded the amount with which he was properly chargeable. The taxation officer formed the opinion that certain income of the complainant has escaped assessment. Thus, proceeding under section 65 (additional assessment) of the Income Tax Ordinance 1979 the taxation officer made additional assessments on 30.6.2001, which rendered the claim of refund non-existent. The complainant appealed the additional assessment before the CIT(A) who, vide his order dated 6.12.2003, vacated the additional assessment for all the three years restoring the claim of refund. The taxation officer appealed the CIT(A)'s order before the Income Tax Appellate Tribunal who dismissed the appeals vide order dated 24.3.2005; Refund vouchers were issued to the complainant on 30.8.2005. The complainant complained to the FTO that the taxation officer was guilty of maladministration in not paying him compensation for delayed payment for the period commencing from 30.6.2001 and ending on the date on which refund vouchers were issued in terms of section 100 of the Income Tax Ordinance 1979, which provided that where as a result of any order passed ... in appeal ... refund of any amount becomes due to an assessee the taxation officer shall refund the amount to assessee irrespective of whether he has or has not made any claim in that behalf. The department contends that since 1.7.2002 section 10 of the 1979 Ordinance stood repealed by the Income Tax Ordinance 2001, and under new refund regime established under the 2001 Ordinance application for refund was necessary the refund was payable when the matter was decided by the Tribunal. The FTO has formed the opinion that since the complainant's appeals against the additional assessment made by the taxation officer on 30.6.2001 were pending when the 2001 Ordinance came into force, they continued under the 1979 Ordinance therefore the complainant's right to receive refund on the basis of the CIT (A)'s order without application also survived.

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

4. In appeal before the CIT(A) against additional assessments the question of refund of excess tax was not in issue. The proceedings for refund of excess tax are clearly separate proceedings from assessment on the appeal against the assessment. The complainant's right to refund will thus be governed by the law that was in existence on 6.12.2003 (date of CIT(A)'s order), which is the 2001 Ordinance.

5. Accordingly, the President has been pleased to set aside the FTO's recommendations dated 02.8.2006 in complaint No.647-L/2006.



(AZHAR AMIN CHOUDHARY)
Section Officer

Copy to:

1. The Registrar (FTO) Secretariat, Islamabad
2. SO (Legal), President Secretariat (Public), Islamabad with reference to their NO. 221/FTO/2007, dated 23.11.2007
3. Mr. Mohammad Saeed Khan (Prop), M/s M.S.K. Associates, H.No.157-C, Tech Society, Canal Bank, Lahore.

(AZHAR AMIN CHOUDHARY)
Section Officer