

F.No.50/2007-Law (FTO)  
Government of Pakistan  
Law and Justice Division  
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Islamabad, the 13<sup>th</sup> March 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 THE ORDINANCE XXXV OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX OMBUDSMAN IN COMPLAINT NO. 263-L/2007**

Sir,

I am directed to refer to your representation No. C.No.4(263)TO-I/07 dated May, 2007 on the above subject and to say that the President has been pleased to pass the following orders:-

2. On 30.11.2006 the complainant applied to the taxation officer for the refund of the excess amount of tax he had paid for tax years 2003 to 2006. The taxation officer refunded the excess amount relating to tax years 2005 and 2006 but rejected the refund application so far as it related to tax years 2003 and 2004 for the reason that it was not made within two years of the date on which the returns of income for the said years were filed. The FTO has recommended that the refund should be made. The recommendation follows the finding that under sub-section (3) of section 170 of the Income Tax Ordinance the refund of excess amount emerges automatically requiring no filing of application.

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

4. Section 170 of the Income Tax Ordinance 2001, so far as relevant, provides that application for refund shall be made within two years of the later of the date on which the Commissioner has issued the assessment order to the taxpayer for the tax year to which refund application relates, or the date on which the tax was paid. Section 120 of the Income Tax Ordinance 2001, so far as material, provides that where a taxpayer has furnished complete return of income-, (a) the Commissioner shall be taken to have made an assessment of taxable income for that year; and (b) the return shall be taken for all purposes of this Ordinance to be an assessment order issued to the taxpayer by the Commissioner on the day the return was furnished. Sub-section (5) of section 170 of the Income Tax Ordinance 2001 provides that any person aggrieved by an order rejecting the refund application may prefer an appeal under the Ordinance. Section 9 (2) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 provides the FTO shall not have jurisdiction to investigate or inquire into matters which relate to determination of tax liability, interpretation of law, rules and regulations relating to such determination in respect of which legal remedies of appeal, review are available under the relevant legislation, which includes Income Tax Ordinance 2001.

5. The FTO's findings show that the taxation officer rejected the complainant's refund application after providing him opportunity of hearing and, as indicated above, legal remedy of appeal was available to the complainant against the taxation officer's order rejecting the application for

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