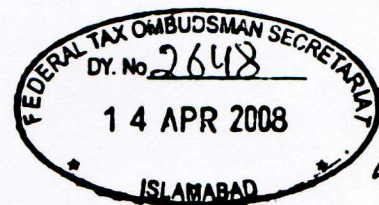


No.41/2007-Law(FTO)
Government of Pakistan
Law and Justice Division



Islamabad, the 28th March 2008.

From: Azhar Amin Choudhary,
Section Officer

To: The Secretary (TO),
Revenue Division (FBR),
Islamabad.

Subject: **REPRESENTATION TO THE PRESIDENT UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAINST THE FINDINGS/RECOMMENDATIONS OF THE F.T.O IN COMPLAINT NO. 1344/2006.**

I am directed to refer to your representation No. 4(1344)TO-I/2006, dated 3.5.2007, on the above subject and to say that the President has been pleased to pass the following orders: -

2. In the assessments for the years 1991-92 to 1993-94, the complainants were allowed rebate under clause (2) of para A of Part IV of the First Schedule to the Ordinance, 1979. The Inspecting Additional Commissioner set aside the assessments under section 66A of the Ordinance on the ground that rebate had been wrongly allowed. Member (Judicial) CBR vide his order dated 26.8.1998 accepted the complainants' revision petition against the order under section 66A, and directed the Commissioner to process the complainants' application and grant approval thereon. The relevant taxation officer rejected the complainants' claim of rebate. The Commissioner (Appeals) rejected the complainants' on 6.5.2003. On the complainants' further appeal the Income Tax Appellate Tribunal vide order dated 3.8.2006 directed the department to implement the Member (Judicial) CBR's findings dated 26.8.1996. The complainants complained to the FTO that the department was guilty of maladministration in not implementing the Tribunal's decision. After investigating the matter the FTO has recommended that:-

- i) Reassessment proceedings (as directed by the learned ITAT) should be completed at an early date.
- ii) Consequential relief (if any) should also be given to the complainant under the law.

3. The department has made representation against the FTO's recommendations on the following grounds:-

- a. The matter of the complaint relates to assessment/rebate which falls outside the jurisdiction of the office of the Federal Tax Ombudsman in terms of section (2) (b) of the FTO Ordinance, 2000.
- b. Compliance in respect of the member (Judicial) CBR order has already been made' in-as-much as application of the assessee for grant of approval of contract was not entertained by the Zonal Commissioner of Income Tax vide No.248/Mic-86/3916 dated 10.6.2000. In this back drop, any order made in compliance with the ITA T' s order to grant approval of the contract by the Zonal Commissioner will tantamount to revision of his own order which is not permissible under the law.

4. Ground (a) depicts very poor appreciation of section 9(2) of the FTO Ordinance 2000 by the department. Section 9(2) ibid applies to the matters where the FTO has questioned the decision relating to assessment. In this case the FTO has simply directed the relevant taxation officer to

complete reassessment proceedings as directed by the Tribunal. The FTO has targeted only delay, which is maladministration. It is regrettable to note that the department has not appended to the representation copy of the order of the Tribunal, of Member (Judicial) CBR, or of the Commissioner dated 06.2000 to enable the President to see if the direction given by the FTO is beyond the scope of the Tribunal's decision. The Commissioner of Income Tax who has drafted this representation has been guilty of neglect and inattention in the discharge of his duties and responsibilities.

5. Accordingly, the President has been pleased to reject the representation of the department.

(AZHAR AMIN CHOUDHARY)
Section Officer

Copy to: -

1. The Registrar, FTO, Islamabad.
2. President's Secretariat (Section Officer (Legal), Islamabad with reference to their No.23/FTO/2008, dated 4.3.2008.
3. Mr. Mobashir Ahmad Malik M/s Associated Technologies (Pvt) Ltd., 142-D, Model Town, LAHORE.

(AZHAR AMIN CHOUDHARY)
Section Officer