

No.48/2007-Law(FTO)
Government of Pakistan
Law and Justice Division

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Islamabad, the 28th March 2008.

From: Azhar Amin Choudhary,
Section Officer

To: The Secretary(TO) I
Central Board of Revenue,
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. 278-K/2007.

248-1(10)108
26/4

69015-K
26-06-08

1249
25/3/08
2007 (70.11)

I am directed to refer to your representation No.4(278)TO-I/2007, dated 19.5.2007, on the above subject and to say that the President has been pleased to pass the following orders: -

2. The taxation officer selected the complainants' return of income for the assessment year 2001-02 filed under the Self Assessment Scheme (SAS) for the assessment under section 62 of the Income Tax Ordinance 1979 and made the assessment accordingly. The complainant appealed the assessment before the Appeal Commissioner. The complainants made application to the Appeal Commissioner for the rectification of his order. They contended that their ground of appeal included the ground that the selection of the return for assessment under section 62 was not authorised therefore their return shall be deemed to have been accepted under SAS but no decision has been given on the said ground. The Appeal Commissioner rejected the appeal. The Appeal Commissioner rejected the application. The complainants made complaint to the FTO. After investigating the complaint the FTO made the following recommendations:-

"The CBR to direct the Commissioner of Appeal to recall the rectification order dated 11.9.2006 and pass a speaking order adjudicating the complainant's claim of Self Assessment for the assessment year 2001-2002 within 30 days of the receipt of this order."

The recommendation follows the findings "that the complainants' claim of Self Assessment was rejected by the Commissioner of Income Tax Appeals in original appellate order as well as in the subsequent rectification order without giving any reason therefor."

3. The department has made representation against the FTO's recommendations. The complainants have furnished detailed written comments on the representation.
4. The appellate order passed by the Appeal Commissioner shows that he noted the complainants' ground that the selection of their return for assessment under section 62 of the 1979 Ordinance was not valid. The Appeal Commissioner rejected the rectification application for the reason that the complainants had not raised the question of qualification of return under Self Assessment Scheme by the taxation officer.
5. The FTO's decision cannot be sustained for more reasons than one. One, the matter raised in the complaint pertained to assessment of income and the appellate order. Two, where the plea of a party is noted by the adjudicator it is presumed that he considered that plea. The Appeal

