No.60/2007-Law(FTO)
Government of Pakistan
Law and Justice Division

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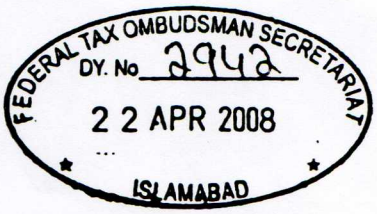
Islamabad, the 31st March 2008.

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. 316-L/2007.**

I am directed to refer to your representation No. 4(316)TO-I/2007, dated 14.6.2007, on the above subject and to say that the President has been pleased to pass the following orders: -

2. The facts now relevant are these. During the period relevant to the tax year 2003 and tax year 2004 the complainants had paid tax in excess of the amount, which they were properly chargeable under the Income Tax Ordinance 2001. They made application for the refund of excess amount on 17.3.2005. The Commissioner refunded the overpaid amount of tax on 4.4.2007. The FTO has recommended: "Secretary Revenue Division should ensure that compensation on the amount of delayed refund for the tax years 2003 and 2004 for the period from 1.5.2005 to 5.4.2007 is paid to the taxpayer. .. "The recommendation follows the findings that the Commissioner was required to decide the refund application filed on 17.3.2005 on or before 1.5.2005 and refund the excess amount. Thus the Commissioner was required to pay compensation for delayed refund for the period from 1.5.2005 to 5.4.2007.

3. The Commissioner has made representation against the FTO's findings/recommendation. The complainants have furnished written comments on the representation.

4. The Commissioner contends that the compensation becomes payable where refund due is not paid within three months of the date on which it becomes due and the refund becomes due on the date the refund order is made Thus, according to the Commissioner, the refund became due on 4.4.2007 when refund order was made. In his representation the Commissioner does not explain what prevented him from passing the refund within 45 days of the receipt of refund application as required by section 170 (4) of the Income Tax Ordinance 2001. According to the Commissioner the only effect of not deciding the refund application, within 45 days of its receipt is that the claimant may appeal against the Commissioner's inaction/omission. It is not understood on what grounds the claimant shall avail the remedy of appeal when he has not been informed for what cause his refund application cannot or could not be decided within 45 days. If the Commissioner was unable to decide the application within 45 days he was required to inform the complainants about the cause, which prevented him from making the refund, so that the complainants could contest validity of the stated causes before the appellate forum. It has been decided that omission or inaction on the part of the Commissioner to decide refund application within 45 days of its receipt by itself is maladministration.

5. There are no valid grounds to interfere with the FTO's recommendation. There is however error in the FTO's recommendation in calculating the period of day for which compensation is payable. The correct period is from 1.8.2005 (the end of three months period from 1.5.2005) to 5.4.2007 (when refund was paid)

6. Subject to the observation in the preceding paragraph, the President has been pleased to reject the representation of the Commissioner.

(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.33/FTO/2008, dated 24.3.2008.
3. Gul Afshan M/s M. Bilal, Traders Fatima Jinnah Road, Sargodha.

(AZHAR AMIN CHOUDHARY)
Section Officer