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No.84/2007-Law(FTO)
Government of Pakistan
Law and Justice Division

Islamabad, the 10th April, 2008.

From: Azhar Amin Choudhary,
Section Officer

To: The Secretary(TO)
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. 632-K/2007.**

I am directed to refer to your representation No. 4(632)TO-I/07, dated 05.09.2007, on the above subject and to say that the President has been pleased to pass the following orders: -

2. This order disposes of two identical representations made against two identical findings/recommendations of the FTO. The Commissioner of Income Tax selected the complainants for audit of their income tax affairs under section 177 of the Income Tax Ordinance 2001. The complainants complained to the FTO that their selection was a case of maladministration. The FTO has found that the selection of the complainants for audit was a case of maladministration and made the following recommendations: "The CBR to direct the concerned Commissioner of Income Tax to withdraw his order regarding selection of complainant's case for audit u/s 177 of the Income Tax Ordinance 2001 relating to the tax year 2003/2004 within 30 days of the receipt of this order. He can however initiate fresh proceedings of audit strictly in accordance with law and in the light of judgment of Superior Courts". The recommendation follows the findings that Commissioner's letter dated 14.3.2007 informing the complainants regarding their selection contained more reasons than those identified by him in the order sheet culminating into the decision for selection .

.3. The department has made representation against the FTO's recommendations. The complainants have furnished written comments on the representation.

4. Section 177 of the Income Tax Ordinance 2001 does not provide that the reasons for which the Commissioner shall decide to select a person shall be conveyed to him. It is however a principle of natural justice and fair play that the person who has been selected for audit must be satisfied that his case has been selected for objective reasons and not on whims. In such cases, as a principle of natural justice, all that the person selected is entitled to know are the reasons for his selection and may complain only if they are not relevant. The FTO's findings that the reasons identified by the Commissioner for selecting the complainants for audit on order sheet were different from those conveyed to them vide letter dated 14.3.2007 was not relevant to recommend withdrawal of the selection decision. What could be relevant was whether the Commissioner had objective reasons to select the complainants. This is what the Supreme Court has decided in Commissioner of Income Tax v Media Network PLD 2006 SC 787. The FTO and the complainants have not appreciated the change brought by the Income Tax Ordinance 2001 regarding the audit of taxpayer's income. In the Income Tax Ordinance 1979 the taxation officer was authorised to ask the taxpayer to justify his income declared in the return and on his failure either to make best judgment assessment or make such additions as were justified. Under the Income Tax Ordinance 2001 the Commissioner is authorised to audit income tax affairs of the taxpayer. If after audit the Commissioner concludes that the taxpayer has not declared his correct income then he shall initiate proceedings for making additional assessment. If the taxpayer has declared correct income, which he is supposed to do, he may have no objection to the audit of his income tax affairs. It may be pointed out that the role of the FTO is limited to identify maladministration as defined in the FTO Ordinance 2001. No act of maladministration, as defined, is discernable from the Commissioner's decision to select the complainants for audit. The FTO's recommendations thus cannot be sustained.

