

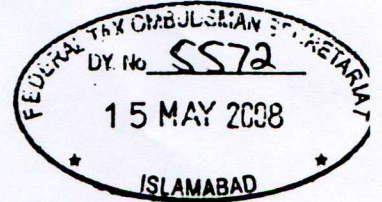
-52

No.94/2007-Law(FTO)
Government of Pakistan
Law and Justice Division

Islamabad, the 8th May, 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. 826/2007.

I am directed to refer to your representation No. 4(826)TO-I/07, dated 05.10.2007, on the above subject and to say that the President has been pleased to pass the following orders: -

2. The complainants earn income by rendering transport services to a prescribed person as defined in section 153 (9) of the Income Tax Ordinance 2001. While making payments to the complainants for the services they rendered, the prescribed person deducted certain amount from the payments as income tax. The complainants, in their return of income for the tax year 2006, declared their receipts of transport services as income from business and claimed refund of the amount in excess of the tax they were properly chargeable. When the Commissioner did not make the claimed refund, the complainants complained to the FTO that the Commissioner was guilty of maladministration. The Commissioner contended that the tax deducted from the payments made to the complainants by the prescribed person was the final tax. The FTO's view is that the final tax regime does not apply to the payments made by the prescribed person to the taxpayer for rendering transport services. After investigating the complaint the FTO has recommended that the Revenue Division shall ensure that refund is made to the complainants.

3. The Revenue Division have made representation against the FTO's recommendation.

4. The Revenue Division contend that the complainants had made application for the refund of the excess amount to the Commissioner under section 170 of the Income Tax Ordinance, 2001, who rejected it on 20.3.2007. Therefore, the complainants ought to have appealed the said order and not to have made the complaint to the FTO. The Revenue Division further contend that the matter raised in the complaint pertained to assessment of income etc. which the FTO could not investigate. The FTO's recommendations are based on the President's decision No F 146/2005-Law (FTO) dated 23.8.2006 in complaint, No.733/2005. It is deplorable that the Revenue Division have not appreciated the import of the President's decision. The President has decided that the Commissioner must refund the excess tax on the basis of taxable income and the tax due specified in the return because as provided by section 120 of the Income Tax Ordinance 2001 where a taxpayer has furnished a return of income for a tax year, the Commissioner shall be taken to have made an assessment of taxable income for that tax year, and the tax due thereon, equal to those respective amounts specified in the return, but if the Commissioner forms the opinion that the taxpayer's claim of adjustment of tax is not valid and the tax deducted is to be treated final tax he must amend the assessment order (deemed order) after due notice to the taxpayer.

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

Contd.....P/2.

