

No.104/2007-Law(FTO)
Government of Pakistan
Law and Justice Division

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Islamabad, the 19th July, 2008.

From: Mr. Muhammad Aslam Rana
Deputy Assistant Solicitor.

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. 965-K/2007.**

I am directed to refer to your representation No. 4(965)TO-I/07, dated 30.11.2007 on the above subject and to say that the President has been pleased to pass the following orders: -

The complainant provides transport services. During the period relevant to tax year 2003 the person(s) to whom the complainant provided services deducted tax from the payments made to the complainant. For the said year the complainant filed statement under section 115(4) of the Income Tax Ordinance 2001 for the year 2003 and claimed refund of Rs.71,997/-. Later the complainant realized that his receipts from rendering transport services were business receipts. He filed return of income and claimed refund of Rs.347,380/-. Assessing officer vide his letter dated No.893 dated 14.5.2007 asked the complainant to explain the situation for filing normal return as there was no provision in law to file normal in place of already filed statement under section 115(4) of the Income Tax Ordinance 2001. The complainant explained the situation vide letter dated 17.05.2007. The complainant complained to the FTO that the assessing officer was not paying attention to his case. The department contended that the complainant's application for refund has been rejected by the taxation officer. After considering the matter the FTO has recommended -

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- (i) The FBR to advise the concerned Zonal Commissioner of Income Tax to examine the feasibility of ~~cancelling~~ the impugned order u/s 122-A allegedly passed u/s 170(4) on 30.06.2007. The concerned taxation officer be directed to decide the complainant's claim of refund for the tax year 2003 by passing a valid and speaking order u/s 170(4) of the aforesaid Ordinance within 45 days of the receipt of this order.
 - (ii) Appropriate disciplinary action be taken against the delinquent taxation officer within 60 days of the receipt of this order.

The department has made representation against FTO's recommendation. The complainant has furnished written comments.

The department contends that the matter raised in the complaint pertained to assessment of income in respect of which legal remedies of appeals were available to the complainant therefore the FTO could not investigate the complaint. The contention is totally unfounded. What the FTO has identified is the assessing officer's failure to decide the complainant's claim for refund by passing a valid and speaking order under section 170 (4) of the Income Tax Ordinance. The FO is right that the assessing officer's letter No.977 dated 30.6.2007 could not be termed an order under section 170(4) of the 2001 Ordinance. It has already been decided by the President (Order NO.52/2007-Law (FTO) dated 13.3.2008 in complaint No.994-L/2006) that the scope of section 170 is wide enough to empower the assessing officer to decide the question of taxability. The assessing officer's view in his letter dated 30.6.2007 that there is no provision in law to authorize the taxpayer to file revised return after filing statement under section 115(4) of the Income Tax Ordinance 2001 was not accepted. The FTO's recommendations must be sustained.

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