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Islamabad, the 19th July, 2008.

From: Mr. Muhammad Aslam Rana
Deputy Assistant Solicitor

To: Dr. Kahlid Latif Khan,
Al-Shifa Hospital,
Lakki Marwat City.

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. 545/2007.

I am directed to refer to your representation No. nil, dated 12-10-2007 on the above subject and to say that the President has been pleased to pass the following orders: -

"For the assessment year 1992-93 the complainant declared his income at Rs.141,657/-. The assessing officer did not accept the declared income and assessed it at higher figure. On appeal by the assessee the Appeal Commissioner directed that the declared income should be accepted. The department's appeal was rejected by the Tribunal. For the assessment year 1993-94 the complainant declared income at Rs.155,823/- but the assessing officer assessed it at higher figure. The Commissioner directed that the declared income should be accepted. The Tribunal rejected the department's appeal. For the Assessing year 1994-95 the assessee declared income at Rs.186,000/- but the assessing officer made assessment at higher figure. The Appeal Commissioner gave some relief to the complainant. On the complainant's appeal the Tribunal gave more relief. The complainant's complaint is that the department has not refunded the tax he had paid on the basis of the assessment made by the assessing officer particularly that part which he had paid while making appeals. The department's case is that there is no proof that any such payments were made. The FTO has directed that the department should make efforts to locate if any amount deposited by the complainant stands to the credit of the department.

The complainant has made representation against the FTO's decision. His plea is that the department should assume the deposits, which he was required to make while making the appeals.

No question of presumption arises. The burden lies on the complainant to show that he deposited any amount. The FTO has already gone to the maximum extent to attend to the complainant's grievance. It is trite rule that one who asserts the existence of a fact must prove it. Since the complainant asserts that he made deposits he has to prove. Instead of pursuing this representation the complainant should have made efforts to collect proof of deposits.

Accordingly, the President has been pleased to reject the representation of the complainant.

(Muhammad Aslam Rana)
Deputy Assistant Solicitor

Copy to: -

1. The Registrar, FTO, Islamabad.
2. President's Secretariat (Section Officer (Legal), Islamabad with reference to their No.60/FTO/2008, dated 05.6.2008.
- ✓ 3. The Secretary, Central Board of Revenue, Islamabad.

(Muhammad Aslam Rana)
Deputy Assistant Solicitor