

Islamabad, the 22nd July, 2008.

From: Mr. Muhammad Aslam,
Deputy Assistant Solicitor.

To :- Mr. Muhammad Abu Bakar Siddique,
Second Secretary(TO),
Federal 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. 1151/2007 (F.B.R. VS M/S SADAR ANJUM-E-AHMADIYA).**

I am directed to refer to F.B.R's representation No. 1(1151)TO-D/07/08/16082-R, dated 29.1.2008, above subject and to say that the President has been pleased to pass the following orders:

"The complainant is a cooperative society. In its returns of income for the assessment years 1982-83 to 2002-03 it claimed that its income was exempt from the levy of income tax. The Income Tax Appellate Tribunal upheld the complainant's plea. As a consequence of the decision of the Appellate Tribunal amount of tax paid by the complainant was *refundable* to it. When the Commissioner failed to make the refund the complainant made complaint to the FTO. The FTO has recommended that Secretary Revenue Division should ensure the properly verified and due amount of refunds are paid to the complainant within 15 days of the receipt of these recommendations with compensations for delayed payment of refund due w/s 102 of the repealed Ordinance of 1979 read with section 171 of the Ordinance.

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

The department contends that since it has made reference to the High Court on the question of law whether the complainant's income was exempt from the tax or not. therefore. it is not obliged to make refund on the basis of the decision by the Appellate Tribunal. The department's contention cannot be sustained for two reasons. One, it is trite law that mere filing of appeal does not operate the suspension of the order appealed from and two, the matter before the High Court is not of appeal against the Appellate Tribunal's decision but only a reference for opinion on the legal issue and as such it is not in continuation of the assessment orders. It has been decided by the President in numerous cases that the tax authorities have no right to withhold citizen money on the plea that they have appealed the decision under which money is due before higher forum except in cases where the higher forum suspends the operation of the decision appealed from. The FTO's decision thus must be sustained.

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

(Muhammad Aslam)
Deputy Assistant Solicitor

Copy to: -

1. The Registrar, FTO, Islamabad.
2. President's Secretariat(Section Officer (Legal), Islamabad with reference to their No.87/FTO/2008 dated 16.6.2008.
- ✓ 3. M/s Sardar Anjuman-e-Ahmadiyya, Chenab Nagar, Tehsil Chinjot Distt. Jhang.

(Muhammad Aslam)
Deputy Assistant Solicitor