

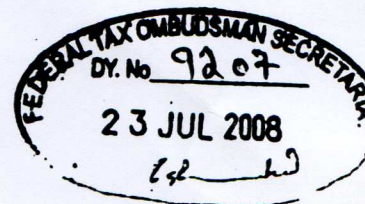
No.118/2007 Law(FTO)
Government of Pakistan
Law and Justice Division

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Islamabad, the 22nd July, 2008.

From: Mr. Muhammad Aslam
Deputy Assistant Solicitor

To :- Mr. Javed Iqbal Mirza
Chief (Legal),
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. 864/07 (F.B.R. VS M/S SARFRAZ ASSOCIATION).**

I am directed to refer to your representation No. 4(864)TO-I/07, dated 10.12.2007 on the above subject and to say that the President has been pleased to pass the following orders: -

"Under the Income Tax Ordinance 2001 income tax is charged on business income. The classic definition of business income (which includes gains or profits from any trade, profession or vocation) is the surplus by which the receipt of the business exceeds the expenditure necessary for the purpose of earning those receipts. However to do away with the trouble of computing the income by keeping accounts of the receipts and the expenses in certain cases the Ordinance has provided that the total receipts shall be deemed income. of course in such cases the rate of tax is lower than that prescribed for computed income. The levy of tax on receipts is commonly known as presumptive tax regime. Where the receipts of a person are subject to presumptive tax regime he is not required to file a normal return of income under section 114 of the Income Tax Ordinance 2001 showing the receipts and expenses. He shall file only a statement under section 115(4) of the Income Tax Ordinance 2001 showing the gross receipts and the tax paid thereon by him or on his behalf. The National Highways and Motorways Police (the Police) employed the complainants to collect fines. The complainants thought: that their receipts from the Police were subject to presumptive tax regime. Therefore, for the tax years 2003 to 2005 they did not file returns of income but filed only the statements under section 115(4) of the Income Tax Ordinance 2001. Later, the complainants learnt that it was their mistake to assume that their receipts were subject to presumptive tax regime. They filed returns of income. On the basis of the said returns certain amounts of excess tax became refundable to them. The taxation officer refused to accept the returns and to make refund of excess tax on the basis of the returns. He held that once a statement under section 115(4) was filed it became final. The complainants made complaint to the FTO. After investigating the complaint the FTO has recommended that the Secretary Revenue Division should ensure that the Commissioner completes all the tax assessment proceedings as are considered necessary for the tax years 2003 to 2005 and 2006.

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

In support of their plea that their receipts were not subject to presumptive tax regime the complainants rely on the decision of the Income Tax Appellate Tribunal in Appeal No.516/16/IB/2005 dated 17.6.2006. The department's case is that since the complainants had filed statements under section 115 of the 2001 Ordinance they could not file the returns.

The department's plea was considered by the President in various cases including complaints No. 994.995,996/2006 and 852-L/2007 and was rejected with the following observations:

"The department's case is that since the complainants have been filing statements under section 115 of the Ordinance according to which the tax deducted from their receipts have been treated as final tax therefore no refund is admissible. The department's approach to the case is not in accord with law. There is no estoppel against statute. If the complainants or any

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