

No.16/2008-Law(FTO)
Government of Pakistan
Law and Justice Division

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 REVIEW APPLICATION NO.64/07 IN COMPLAINT NO. 485-L/07.**

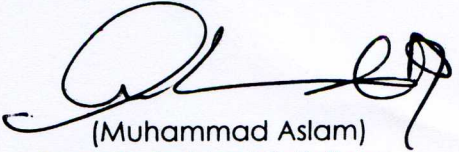
I am directed to refer to your representation No. 4(485)TO-I/07/08/10224, dated 17.1.2008 on the above subject and to say that the President has been pleased to pass the following orders: -

“For the tax years 2003 and 2004, the complainant opted to be taxed under presumptive tax regime and for that purposes filed statements under section 115 (4) of the Income Tax Ordinance 2001. For the tax year 2005, he however filed regular return of income and on the basis of the return claimed refund of Rs.834,029/-. He made application for refund on 16.2.2006. The taxation officer vide his order dated 29.3.2007 rejected refund application on the ground that since for the tax years 2003 and 2004 the complainant had opted to be taxed under presumptive tax regime he could not file return for the tax year 2005. The complainant did two things. One, he made statutory appeal against the taxation officer's decision before the Collector and two, he made complaint to the FTO. The FTO vide his findings dated 18.6.2007 recommended that the impugned order of the taxation officer dated 29.3.2007 be set aside and the due refund be issued as per law to the complainant. The department applied to the FTO to review his recommendation dated 18.6.2007 because the Commissioner (Appeal) had rejected the complainant's appeal and affirmed the taxation officer's decision. The FTO vide his order dated 6.11.2007 rejected the review petition.

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

In its reply to the complaint. the department had raised a preliminary objection that the FTO could not investigate the complaint because the complainant has filed statutory appeal against the taxation officer's decision. The FTO rejected the objection for the reason that the complainant has filed appeal after lodging the complaint. The FTO's above decision was contrary to the President's decision that where a complainant makes statutory appeal the FTO cannot investigate the complaint whether the complaint was made before or after the appeal. The reason is that the legal appeal is judicial jurisdiction and the complaint before the FTO is administrative jurisdiction, and administrative jurisdiction must always give way to the judicial jurisdiction. It was a sheer abuse of process of the law on the part of the complainant to make complaint to the FTO and then make legal appeal before the Collector. The FTO's recommendation dated 18.6.2007 and his decision dated 6.11.2007 in review petition thus cannot be sustained.

Accordingly, the President has been pleased to set aside the FTO's findings/recommendation dated 18.6.2007 in complaint No.485-L/07 and decision dated 6.11.2007 in Review No.64/07.


(Muhammad Aslam)
Deputy Assistant Solicitor

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Copy to: -

1. The Registrar, FTO, Islamabad.
2. President's Secretariat (Section Officer (Legal), Islamabad with reference to their No.77/FTO/2008, dated 16.6.2008.
3. M/s Gohar Industries, Mehmood Booti Bund Road, Lahore.

(Muhammad Aslam)
Deputy Assistant Solicitor