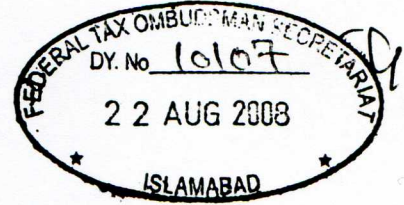


No.6/2008-Law(FTO)
Government of Pakistan
Law and Justice Division



Islamabad, the 28th July, 2008.

From: Mr. Muhammad Aslam,
Deputy Assistant Solicitor.

To :- The Secretary (TO-I)
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. 1009/2007 (F.B.R. VS MR. MUHAMMAD HAYAT KHAN SARDAR & CO.).

Handwritten notes:
22/8/08
Dir (GRM)

I am directed to refer to your representation No.4(1009)TO-I/07, dated 07.01.2008, on the above subject and to say that the President has been pleased to pass the following orders: -

“The highways authority had employed the complainants. an AOP. of the name and style *Mis Sardar Khan and Co.*, Contractors Mianwali, for collection of toll tax. The authority had deducted advance tax from the payments made to the complainants and paid to the department. The amount of tax paid on the complainants' behalf was in excess of the amount which they were properly chargeable. On the basis of revised return of income for the tax year 2003, Rs.474,675/- were refundable to them. The complainants filed refund application on 19.10.2004. The taxation officer did not decide the application within 45 days as he was required to do under section 170(4) of the Income Tax Ordinance 2001. The taxation officer however vide his letter dated 22.7.2005 informed the complainants that refund cannot be made because their assessment has been framed as an association of persons whereas their status in the contracts was of an individual. The complainants filed appeal against the taxation officer's letter but it was rejected by the Commissioner. The complainants appealed the Commissioner's decision before the Appellate Tribunal, and the Tribunal vide its decision dated 23.5.2007 cancelled both the taxation officer's letter dated 22.7.2005 and Commissioner's decision. As the result of the Tribunal's decision the department issued refund voucher but according to the complainants it was defective and did not include compensation for delayed payment. After investigating the complaint the FTO has recommended that -

- i) Secretary, Revenue Division is to ensure that refund is actually paid to the taxpayer within 15 days of the receipt of these recommendations;
- (ii) Lawful amount of compensation u/s 171 of the Ordinance in light of discussion above be also paid within 15 days;
- (iii) Disciplinary proceedings be initiated against the concerned T.O. and Officer Superintendent or the person Incharge of issuing refunds and sending the refund vouchers (by whatever designation now called) and concluded within 45 days of the receipt of these recommendation:

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

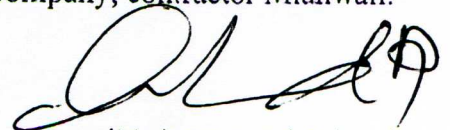
The taxation officer had rejected the complainants' refund application on the ground that the complainants have been assessed in the status of an AOP while their status in the contracts was of an individual. The department's representation does not touch the crucial point on which the decision of the Appellate Tribunal is based. The Tribunal's decision is based on the findings that while deciding the refund application the taxation officer could not raise the question that the complainants' assessment was invalid as it has been made as of an AOP whereas a number of the AOP had obtained contracts as an individual. The Tribunal held that the proceedings on the refund application through which a new controversy was triggered were without jurisdiction and void ab initio (emphasis supplied). The taxation officer could not frame assessment under the garb of the refusal of the refund application. Thus the taxation officer's decision of rejecting the complainants' refund application was unreasonable and based on irrelevant ground. He clearly depicted incompetence and ineptitude in the discharge of his duties and responsibilities. The FTO's recommendations 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.93/FTO/2008, dated 24.6.2008.
3. Mr. Muhammad Hayat Khan, M/s Sardar Khan & Company, contractor Mianwali.


(Muhammad Aslam)
Deputy Assistant Solicitor