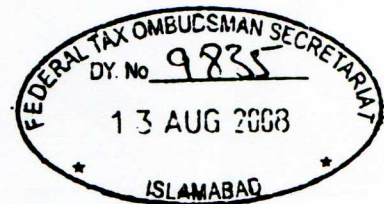


Islamabad, the 28th July, 2008.

Mr. Muhammad Aslam,  
Deputy Assistant Solicitor.

Dr. Muhammad Irshad,  
Secretary(TO-I),  
Central 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. 38/2007(REV) AND NO.351/2007 (F.B.R. VS RIZWAN TEXTILE MILLS).**

I am directed to refer to your representation No. 4(351)TO-I/07 dated 27.9.2007 on the above subject and to say that the President has been pleased to pass the following orders: -

"For the assessment years 1991-92 and 1992-93 the complainant declared his incomes at zero and Rs.60,000/- respectively. The assessing officer did not accept the declared amounts and framed assessments at Rs.200,000/- for 1991-92 and at Rs.1,657,250/- for 1992-93. On the complainant's appeal the Appeal Commissioner set aside the assessments made by the assessing officer and remanded the case for denovo proceedings. The assessing officer reframed the assessments at Rs.9,016,741/- for 1991-92 and at Rs.6,666,000/- for 1992-93. On appeal the Appeal Commissioner reduced the assessment for 1991-92 to Rs.200,000/- and for 1992-93 to Rs.1,657,250/-. On further appeals by the complainant the Income Tax Appellate Tribunal vide its order dated 30.8.2000 set aside the assessments and remanded the case to the assessing officer for denovo proceedings. The assessing officer did not pass assessment orders within the prescribed time i.e. on or before 30.6.2002. The complainant made complaint (351/2007) to the FTO on 14.03.2007. His grievance was that the department was guilty of mal-administration in not making refund of the excess tax paid by him being the differential of the tax paid by him or on his behalf and the tax payable on his declared income. On 12.06.2007 the FTO rejected the complaint on the ground that it has not been made within six months of the day (30.06.2002) when Cause of action arose to the complainant. The complainant petitioned to the FTO for the review of his decision dated 12.06.2007. Reviewing his decision dated 12.06.2007 the FTO in his decision dated 29.08.2007 has formed the opinion that as the assessing officer failed to pass assessment orders relating to the assessment years 1991-92 and 1992-93 on or before 30.06.2002 the declared income for both years as per return would stand accepted and any amount paid in excess of the amount of tax payable on the declared income was refundable.

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

The department prays: "that the decision/findings of the Honourable FTO in review application No.38/2007 in C.No.351/2007 vide order dated 29.08.2007 may kindly be vacated as the complaint was barred by time as per section 10(3) of the FTO Ordinance, 2000, no act of mal-administration was established within the meaning of section 2(3) and redressal of complaint was beyond his jurisdiction, functions and powers in terms of section 9(2) (b) of the FTO Ordinance, 2000". The department contends that the complainant's complaint was time-barred. Therefore, the FTO's decision dated 12.06.2007 rejecting the complaint was valid and his decision on review is invalid. The department does not contest the merits of the case i.e. that on account of the assessing officer's failure to make assessment orders on or before 30.06.2002 the complainant's declared incomes shall be treated his taxable income.

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Section 10(3) of the FTO Ordinance provides that a complaint shall be made not later than six months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, but the FTO may conduct any investigation pursuant to a complaint which is not within time if he considers that there are special circumstances which he deems proper in the interest of justice to entertain the complaint. The law confers discretion on the FTO to conduct any investigation pursuant to a time-barred complaint. It is our standard policy that where the FTO in exercise of his discretionary power decides to conduct any investigation in pursuant to a complaint which is not within time his decision is not interfered with unless it is apparent that the exercise of discretion will operate unfairly. No such thing is discernable. The department's plea that the matter raised in the complaint pertained to assessment is inapt. Section 9(2) of the FTO Ordinance 2000, so far as relevant, provides that the Federal Tax Ombudsman shall not have jurisdiction to investigate or inquire into matters which relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation". No assessment was involved in the matter. The complainant had no right of appeal against the acceptance of his declared income. The FTO's decision must be sustained.

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

The FBR shall take appropriate action against the assessing officer who failed to make assessment orders on or before 30.06.2002.

(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.61/FTO/2008, dated 13.6.2008.
3. Mr. Muhammad Khalid Malik C/o Rizwan Textile Mills (Pvt) Ltd., Flat No.3, 1<sup>st</sup> Floor (80-W), Malik Complex Blue Area, Islamabad.

  
(Muhammad Aslam)  
Deputy Assistant Solicitor.