

No.121/2007-Law(FTO)  
Government of Pakistan  
Law and Justice Division  
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Islamabad, the 28<sup>th</sup> July, 2008.

From: Mr. Muhammad Aslam,  
Deputy Assistant Solicitor.

To: The 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. 627/2007 (F.B.R. Vs M/S SOCIO ENGINEERING CONSULTANTS, ISLAMABAD).**

I am directed to refer to your representation No. 4(627)TO-I/07 dated 19.12.2007 on the above subject and to say that the President has been pleased to pass the following orders: -

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"The department noticed that the figures of receipts, expenses and income for the tax year 2003 shown by the complainants in their return of income for the tax year 2004 were inconsistent with the figures they gave in their return for the tax year 2003 (which they had once revised). The Commissioner accordingly called upon the complainants to show cause why their assessment for the tax year 2003 should not be amended under section 122 of the Income Tax Ordinance 2001. After the notice the complainants again revised the return for 2003 the tax year. After revising the return they asked the Commissioner to close the proceeding. The Commissioner declined to close the proceeding. The complainants made complaint to the FTO. After investigating the complaint the FTO has formed the opinion that "section 114(B) of the Income Tax Ordinance 2001 confers an unqualified right on the taxpayer / assessee to file revised state of any assessment year within five years. Once that right is exercised the revised return as filed within the prescribed period of five years the same becomes assessment by operation of section 122 (3) of the Ordinance which being mandatory has overriding effect as such notice issued under section 22 (5A)/9 earlier shall be deemed to have been fully complied with and rendered ineffective. No pending in furtherance therefore could legally be continued unless the case is submitted for total audit in accordance with law. The FTO also formed the opinion that the department was inappropriately rejecting complainants' plea regarding the increase of revenue from Rs.8,914,086 (in the original return) to Rs.1 08,812,680 (in the revised return). In the light of the above findings the FTO recommended that "(i) Secretary, Revenue Division is to ensure that the Commissioner is treated as having made an amended assessment of taxable income and tax payable thereon as set out in the revised return [section 122 (3)]; (ii) no further proceedings are conducted by the Additional Commissioner in pursuance of notice issued u/s 122 (9) and (5A) of the Ordinance and if audit is considered essential the same shall be done only u/s 177 of the Ordinance as per CBR's set policy for the purpose."

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

