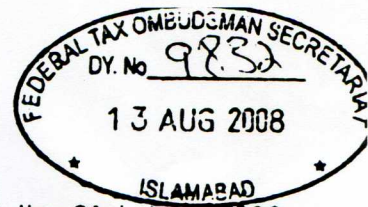


No.55/2007-Law(FTO)  
Government of Pakistan  
Law and Justice Division



Islamabad, the 31st July, 2008.

From: Mr. Muhammad Aslam,  
Deputy Assistant Solicitor.

To: The Secretary(TO),  
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. 350/2007.**

I am directed to refer to your representation No. 4(350)TO-I/2007, dated 12.6.2007, on the above subject and to say that the President has been pleased to pass the following orders: -

"During the period relevant to the tax year 2006 the complainant had paid tax in excess of the amount which he was properly chargeable under the Income Tax Ordinance 2001. On 7.3.2007 the complainant complained to the FTO that the taxation officer was guilty of maladministration in not refunding the excess amount. He prayed that the department may be directed to refund the excess amount alongwith additional payment for delayed refund. On 31.3.2007 the department issued refund to the complainant. The complainant withdrew from the prosecution of the complaint so far as it related to non-issuance of refund but continued its prosecution for non-payment of additional payment. After investigating the complaint the FTO has recommended: "Secretary Revenue Division is to ensure that lawful amount of compensation i.e. Rs.478/- as claimed or Rs.407/- in case of receipt of return on 29.9.2007 as stated by the learned DR is paid to the complainant within 30 days of the receipt of these recommendations."

The Department have made representation against the FTO' s findings/recommendation. The complainant had furnished written comments on the representation.

**The relevant law.**

Sections 170 and 171 of the Income Tax Ordinance 2001 are the governing sections. They, so far as material, read as under:-

"170. Refunds.- (1) A taxpayer who has paid tax in excess of the amount which the taxpayer is properly chargeable under this Ordinance may apply to the Commissioner for a refund of the excess.

(1 A)

(2) An application for a refund under sub-section (1) shall be -

- (a) made in the prescribed form;
- (b) verified in the prescribed manner; and
- (c) made within two years of the later of -
  - (i) the date on which the Commissioner has issued the assessment order to the taxpayer for the tax year to which the refund application relates; or
  - (ii) the date on which the tax was paid.

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- (3) Where the Commissioner is satisfied that tax has been overpaid, the Commissioner shall
    - (a)
    - (b)
    - (c) refund the remainder, if any, to the taxpayer.
  - (4) The Commissioner shall, within forty five days of receipt of a refund application under sub-section (1), serve on the person applying for the refund an order in writing of the decision after providing the taxpayer an opportunity of being heard.
  - (5) A person aggrieved by-
    - (a) an order passed under sub-section (4); or
    - (b) the failure of the Commissioner to pass an order under sub-section (4) within the time specified in that sub-section,

may prefer an appeal under Part III of this Chapter.

**171. Additional Payment for delayed refunds.** (1) Where a refund due to a taxpayer is not paid within three months of the date on which it becomes due, the Commissioner shall pay to the taxpayer a further amount by way of compensation at the rate of six per cent per annum of the amount of the refund computed for the period commencing at the end of three months period and ending on the date on which it was paid.

- (2) For the purpose of this section, a refund shall be treated as having become due -
  - (a)
  - (b)
  - (c) in any other case, on the date the refund order is made.

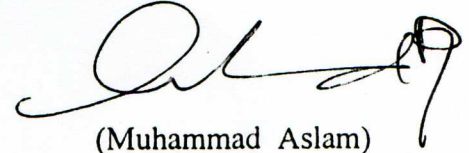
The department contends that the law does not say that if refund application is not decided within 45 days of its receipt the refund will be deemed to have become due. According to the department if the Commissioner does not decide refund application within 45 days as aforesaid his omission/inaction only enables the taxpayer to make appeal under the Ordinance. The department's contention is plainly against the purpose for which the Commissioner has been obliged to decide the refund application within the prescribed time. No explanation has been furnished that the Commissioner had sufficient reasons for not deciding the refund application within the prescribed time. The department's contention that if the Commissioner does not decide the refund application within 45 days of its receipt the only right the law has conferred on the taxpayer is to make appeal cannot be accepted on any legal or equitable principle. One can assume that taxpayers would not insist that the Commissioner should pay them additional amount if the Commissioner shows them that he was prevented for sufficient cause from deciding the application within time. The Commissioner has not bothered to disclose the cause its sufficiency or insufficiency besides - which prevented him from deciding the complainant's refund application within time. The omission to decide the complainant's refund application within the prescribed time without sufficient cause by itself was, on the part of the Commissioner, an act of maladministration. No ground to interfere with the FTO's recommendation.

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.39/FTO/2008, dated 20.3.2008.
3. M/s A.A., Traders Millat Town, C/o Mian Zafar Iqbal, Advocate, High Court Zafar Law Associates, 23 Grain Market,Gojra.



(Muhammad Aslam)  
Deputy Assistant Solicitor