

No.93/2007-Law(FTO)
Government of Pakistan
Law and Justice Division

661

Islamabad, the 26th August, 2008.

From: Mr. Muhammad Aslam Rana,
Deputy Assistant Solicitor.

To :- Dr. Muhammad Irshad,
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 COMPLAINT NO. 715 OF 2007 (F.B.R. VS M/S ALLIED WEAVERS (PVT) LTD. FAISALABAD)

I am directed to refer to your representation No. 4(715)TO-I/07, dated 02.10.2007 on the above subject and to say that the President has been pleased to pass the following orders: -

The incomes specified in the Second Schedule to the Income Tax Ordinance 1979 (since repealed) were exempt from tax. Clause (118D) of the Second Schedule read as follows:

"(118D) (1) Profits and gains derived by an assessee from an industrial understating set up between the first day of December, 1990, and the thirtieth day of June, 1995, both days inclusive, for a period of five years beginning with the month in which the undertaking is set up or commercial production is commenced, whichever is the later ...".

The complainants claimed that their incomes relating to the assessment years 1999-2000 and 2000-2001 were exempt from tax under clause 118D ibid. The assessing officer vide his assessment order dated 28.12.2004 declined to accept the complainants' claim (The reasons for which the assessing officer declined to accept the complainants' claim are neither available in the FTO's findings nor their knowledge is necessary in view of the matter raised in the complaint).

The complainants made appeal against the assessment order dated 28.12.2004 before the Appeal Commissioner on 20.07.2006. Section 129 of the 1979 Ordinance provided that any assessee objecting to an assessment order made by the assessing officer could appeal to the Appeal Commissioner. Section 130 of the 1979 Ordinance provided that appeal shall be presented within thirty days of the date of service of the notice of demand relating to the assessment. The Appeal Commissioner rejected the complainants' appeal on the ground that it has not been made within the prescribed time. The complainants made complaint to the FTO. They contended that the Appeal Commissioner was guilty of mal-administration in rejected their appeal as time-barred because the service of the notice of demand alleged to have been made on the complainants on 15.1.2005 did not exist factually as well as legally. After investigating the complaint the FTO has recommended that "Secretary, Revenue Division should direct the CIT (Appeals) to consider the appeal afresh and pass a detailed and judicious order on facts of the case under clause (118D) of 2nd Schedule to the repealed Ordinance of 1979 for the two years (1999-2000 and 2000-2001) within 45 days". The recommendation follows the finding that "the Appeal Commissioner has committed an act of judicial mal-administration, which needs corrective action by the FTO. The case of justice has to prevail over technicalities".

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The Revenue Division have made representation against the FTO's recommendation/finding. The complainants have furnished written comments on the representation.

There is no concept of justice sans law. The courts as well as public authorities are required to administer justice under law. Article 4 of our Constitution says that to enjoy the protection of law and to be treated in accordance law is the inalienable right of every citizen. There is no right to justice sans law. The phrase engraved on the pediment of the Supreme court of the United States is: "Justice under law". The next question is: are the provisions of law relating to limitation mere technicalities antagonistic to the justice? There is no authority answering the question in affirmative.

The FTO has not identified the provisions of law under which the Revenue Division can set aside the Appeal Commissioner's decision rejecting the complainants' appeal as time-barred and directing him to decide the appeal on merits. The FTO has said that the Appeal Commissioner has committed act of judicial mal-administration. It is plainly beyond the scope of the FTO's jurisdiction. The question whether the complainants' appeal before the Appeal Commissioner was time barred or within time was a mixed question of facts and law, which the Appeal Commissioner was competent to decide. Even if it is accepted that in rejecting the complainants' appeal the Appeal Commissioner made a wrong decision but an un-meritorious decision, reached without mal-administration, cannot be termed an act of mal-administration. (Administrative law 2000 by Sir William Wade p.96). The Appeal Commissioner's decision was appealable before the Income Tax Appellate Tribunal, and through the Tribunal it could be brought before a High Court and the Supreme Court. In such matters the FTO's jurisdiction is barred (section 9(2) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000). The FTO's findings/recommendation cannot be sustained.

Accordingly the President has been pleased to set aside the FTO's findings/recommendation dated 01.09.2007 in complaint No.715/2007.



(Muhammad Aslam Rana)
Deputy Assistant Solicitor.

Copy to: -

1. The Registrar, FTO, Islamabad.
2. President's Secretariat (Section Officer (Legal), Islamabad with reference to their No.62/FTO/2008, dated 12.8.2008.
3. M/S Allied Weavers (Pvt.) Limited, Faisalabad.

(Muhammad Aslam Rana)
Deputy Assistant Solicitor.