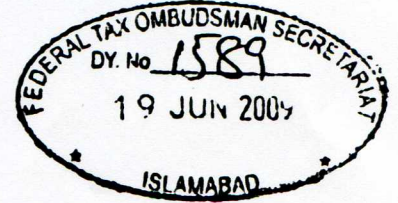


F.No.44/08-Law (FTO)
Government of Pakistan
Law and Justice Division

Islamabad, the 16th June, 2009.

From: Azhar Amin Chaudhary,
Section Officer.

To: Second Secretary (TO),
Federal Board of Revenue,
Islamabad.



Sub:- **REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX OMBUDSMAN IN COMPLAINT NO. 1248-K/07 (FBR VS M/S INTERNATIONAL FLOOR COVERING LTD)**

I am directed to refer to your representation No. C.No. 4(1248)TO-I/07/08/37467-R, dated 06.03.08, on the above subject and to say that the President has been pleased to pass the following orders:-

2. Refund of excess amount of tax paid by the complainants for the assessment years 1995-96 and 1996-97 was created as result of assessment orders made on 25.4.1996 and 21.11.1997 respectively but the amount was paid on 29.06.2000. On the complaint the FTO has recommended that:

"The FBR to direct the concerned Commissioner of Income Tax to decide the complainant's claim of compensation strictly in accordance with the provision of section 102 of the repealed Income Tax Ordinance 1979 within 30 days of the receipt of this letter."

3. The department has made representation against the FTO's recommendation.

4. The FTO's recommendation is based on the opinion as provided under section 99 of the Income Tax Ordinance 1979. The department was required to refund the excess amount to the complainant when refund was created as the result of assessment irrespective of whether the complainant had or had not made any claim in that behalf, and as the department delayed the payment it must pay compensation provided for under section 102 of the 1979 Ordinance.

5. The department contends that section 102 of the Ordinance comes into play only when refund order is made and as no refund order was made on 24.4.1996 and 21.11.1997 (when refunds were created as a result of assessment) no compensation was payable. Section 100 as substituted in 1985 did away with the requirement of making refund application. It contains substantive law. Section 102 is only consequential provision. It has to be harmonised by construing it in the light of the substantive provisions contained in section 100. The harmonious construction is that if the payment of refund created under the assessment is delayed the taxpayer must get compensation.

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

(Azhar Amin Choudhary)
Section Officer.

Copy to:

1. ✓ The Registrar, Federal Tax Ombudsman, Islamabad.
2. Director (Legal), President Secretariat (Public), Islamabad with reference to their NO.125/FTO/2008, dated 17.04.2009.
3. M/S International Floor Covering Limited, c/o m/s Faruq Ali and Company, 803 8th Floor, Land Mark plaza, Muhammad Bin Qasim Road Office 1.1. Chundrigar Road, Karachi.

(Azhar Amin Choudhary)