

No.20/2008-Law(FTO)
Government of Pakistan
Law and Justice Division

113
Islamabad, the 7th July, 2009.

From: Azhar Amin Choudhary,
Section Officer

To: ✓
The Secretary(TO-I)
Central Board of Revenue,
Islamabad.

Subject: **REPRESENTATION UNDER SECTION 32 OF THE ESTABLISHMENT OF THE
OFFICE OF THE FEDERAL TAX OMBUDSMAN ORDINANCE (XXXV OF 2000)
IN COMPLAINT NO. 422-K/07 VS M/S IHSAN SONS (PVT)**

I am directed to refer to the Federal Board of Revenue's representation No. 4(422)TO-1/07, dated 21.10.2008(copy enclosed), on the above subject and to say that the President has been pleased to pass the following orders: -

2. The complainant complained to the FTO that the Commissioner Income Tax was guilty of maladministration in not making refund of excess tax for the assessment year 2002-2003 and tax years 2003, 2004 and 2005 inspite of various requests, reminders and personal visits. In his report on the complaint the Commissioner stated that refund for the tax years 2003, 2004 and 2005 has been issued on 12.04.2007 while the refund for the assessment year 2002-2003 is pending for verification of the payment of tax. After considering the matter the FTO vide his findings/decision dated 28.05.2007 FTO recommended:

- i) The complainant's pending claim for refund for the year 2002-03 be settled within 45 days of the receipt of this order in accordance with law facts of the case after providing a reasonable opportunity of hearing to the complainant.
- ii) The complainant's claim for additional payment for delayed refund under section 171 of the Income Tax Ordinance, 2001 be examined and settled in accordance with law and facts of the case after providing a reasonable opportunity of hearing to the complainant.

In compliance with the FTO's recommendation No.(ii) the taxation officer examined the complainant's claim for additional payment for delayed refund and by his order/letter dated 09.08.2007/368 informed the complainant as under:

" your refunds have been issued to your well before expiry of mandatory period of 3 month. As such your claim of additional payment by way of compensation under section 171 of the Income Tax Ordinance, 2001 is not legally admissible. Therefore, we regret to disallow your claim for tax year 2003, 2004 and 2005. However, if you required any further clarification in the matter or have any objection, you may write to us".

The Board of Revenue forwarded a copy of the taxation officer's order/letter to the Office of Federal Tax Ombudsman. The Director (Implementation and Monitoring) of the FTO's Office vide his letter 27.12.2007 directed the Secretary Revenue Division to direct the concerned quarter to issue the compensation of the delayed refund keeping in view the position stated in the letter. He had stated the position as under:

"The mater has been thrashed in this office and the Hon'able Federal Tax Ombudsman has recommended in various complaints and in review application e.g. Review No.52 in Complaint No.550/07, Review No.53 in Complaint No.528/07 and Review No.55 in Complaint No.526/07

(copy enclosed) etc. that the department was bound to pay the compensation u/s 171 of the Income Tax Ordinance, 2001 till the date the actual refund was not paid to the complainant. The refund orders are to be passed within prescribed period of 45 days u/s 170(4) of the Ordinance and if the department does not pass the refund order for so many years the complainant cannot be held responsible for it and cannot be deprived of having compensation u/s 171 of the Income Tax Ordinance".

3. The Revenue Division have made representation against the Director's letter-dated 27.12.2007. Through President's Secretariat letter dated 11.10.2008 the Director was requested to certify that his letter dated 27.12.2007 was the FTO's order. In response to the letter the Deputy Registrar of the FTO's Secretariat has informed that Director's letter was *in line with the order of honourable FTO dated 17.12.2008*. It is obvious that the Director's letter is not the order/decision of FTO.

4. The legal position is that if the Revenue Division does not comply with the recommendation of the FTO, the FTO may refer the matter to the President who may in his discretion direct the Revenue Division to implement the recommendation and inform the FTO accordingly. After examining the taxation officer's order letter dated 09.08.2007/368 if the FTO was not satisfied that his recommendation has been complied he could make reference to the President for issuing appropriate direction to the Revenue Division. The Director had no power to direct the Revenue Division to comply with the FTO's recommendation in the manner he did.

5. Accordingly, the President has been pleased to set aside the Director's letter dated 09.08.2007.

2.671C



(AZHAR AMIN CHOUDHARY)
Section Officer

Copy to: -

1. President's Secretariat (Deputy Director (Legal), Islamabad with reference to their No.135/FTO/2008, dated 19.6.2009.
2. The Registrar, FTO, Islamabad.
3. M/s Ihsan Sons (Pvt) Ltd. 3rd Floor Ihsan Chamber, A-37, Block-7, & 8, C.C. Area, KCIISU, Karachi.

(AZHAR AMIN CHOUDHARY)
Section Officer