

No.114/2008-Law(FTO)
Government of Pakistan
Law and Justice Division

Islamabad, the 10th November, 2009.

From: Azhar Amin Choudhary,
Section Officer.

To :- M/S Safdar Nazir & Company,
Railway Road, Gojra through Zafar Law Associates,
23, Grain Market, Gojra. District,
Toba Tek Singh.

Subject: REPRESENTATION UNDER SECTION 32 OF THE ESTABLISHMENT OF THE OFFICE OF THE FEDERAL TAX OMBUDSMAN ORDINANCE (XXXV OF 2000) IN COMPLAINT NO. 661/08 (MR. SAFDAR ALI VS FBR)

I am directed to refer to your representation Nil, dated Nil, on the above subject and to say that the President has been pleased to pass the following orders: -

2. On the basis of assessment/deemed assessment order for each of the assessments years 1999-2000 to 2002-2003 certain amount of excess paid tax was refundable to the complainant. The taxation officer however paid the refund to the complainant on 31.03.2007. The complainant complained to the Federal Tax Ombudsman (FTO) that the taxation officer was guilty of maladministration in not paying him the further sum by way of compensation under section 102 of the Income Tax Ordinance 1979. The FTO has rejected the complaint for the reason that the compensation is payable if the refund is not paid within three months of the refund order as the refund were paid to the complainant within the said period no further sum was payable.

3. The complainant has made representation against the FTO's decision. The department has furnished written comments on the representation.

4. The complainant contends that the FTO's decision is contrary to the President's precedent decisions No.155/2002/Rep(FTO)/Law dated 15.12.2003 affirming the FTO's decision dated 07.11.2002 in complaint No.1001/2002 and dated 27.07.2007 affirming the FTO's decision dated 22.11.2006 in complaint No.757/2006. In its comment of the representation the department has not explained how the complainant's claim was not required to be decided in accordance with the President's precedent decisions. In his decision dated 27.06.2007 the President has held that when the assessment/deemed assessment order has been passed the taxation officer is required to process refund claim even if the taxpayer had not made any application for refund, and if refund is not paid within three months of the assessment/deemed assessment order the taxpayer is entitled to compensation. The substitution of section 100 of the Income Tax Ordinance 1979 in 1985 had affected sections 99 and 102 of the Ordinance impliedly. The provisions of the sections 99,100 and 102 of the Ordinance were required to be rationalized, and rational meanings of the sections were that if the refund was not paid within three months of the date of assessment or deemed assessment order the taxpayer was entitled to compensation for delayed payment. The department's argument that although the requirement of making refund application was done away with under section 100 of the Income Tax Ordinance 1979 as substituted by the Finance Act 1985 and the refund became due when assessment/deemed assessment order was passed but for the purposes of section 102 the date when the refund shall be deemed to have become due was the date when refund order was made is not acceptable in law.

5. Accordingly, the President has been pleased to accept the representation and direct the taxation officer to pay additional amount to the complainant at the prescribed rate(s) for the period reckoned from three months after the date of assessment/deemed assessment order till the date of the payment of refund.

(Azhar Amin Choudhary)
Section Officer

Copy to: -

1. The Registrar, FTO, Islamabad.
2. Director (Legal), President Secretariat (Public), Islamabad with reference to their No.18/FTO/2009, dated 7-10-2009.
3. The Second Secretary (TO), Legal Wing, Federal Board of Revenue, Islamabad.

(Azhar Amin Choudhary)
Section Officer