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No.44/2009- Law-I (FTO)
Government of Pakistan
Ministry of Law, Justice and Parliamentary Affairs

Islamabad, the 13th February, 2010

From :- Muhammad Hashim Abro,
Section Officer.

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

Sub: REPRESENTATION UNDER SECTION 32 OF THE
ESTABLISHMENT OF THE OFFICE OF THE FEDERAL TAX
OMBUDSMAN ORDINANCE (XXXV OF 2000) IN COMPLAINT
NO. 94-I/2009 (FBR VS MR. MUHAMMAD ARIF)

I am directed to refer to your representation No.DG/RTO/J-85/FTO/SO-
I/579, dated 5.08.2009 on the subject noted above and to say that the President has been
pleased to pass the following orders:-

2. The grievance of the complainant was against delay in refund pertaining to
Income tax returns for the year 2005 to 2008. The refund application was filed on
22.11.2008. The complainant observing delay made a representation to the Director
General RTO and obtained orders on 22.01.2009 for the disposal of the refund claim.
However, the concerned taxation officer asked for certain documents which were already
provided. The complainant again provided the same on 29.01.2009. His grievance was
that that the taxation officer dealing with the matter was illy-dallying and procrastinating
the matter. His case was that the delay in disposing of his claims did constitute
maladministration and he was also entitled to further compensation.
3. The complaint was accepted by the FTO. This representation has been filed
by the Agency (FBR) against the findings of the FTO.
4. Before the FTO the main objection of the Agency was with respect to the
maintainability of the complaint. It was, however, contended before the FTO that:

“...act of withholding tax u/s 151 of the Income Tax Ordinance, 2001 by the
financial institution is indicative of the fact that the amount was chargeable
to the tax. The onus of proving that the amount is exempt from tax now lies
upon the complainant. The taxation officer is already facilitating him in
respect of his refund matter. However, if assistance from complainant is not
made in this regard the case may be forwarded for audit u/s 177 of the

Income Tax Ordinance, 2001. The complainant may be filed as being devoid of merit".

5. The FTO observed as follows:
"The complainant's case has been referred to audit after filling of the complaint which indicates that the Respondent would not have referred the case to audit if he had not applied for refund. The reference of a case to audit does not absolve the taxation officer from disposing of the claim of refund. In the instance case the complainant has produced sufficient evidence to prove his claim which the taxation officer has ignored. It has been held in the case reported as 2007 PTD 1955 that the reason for withholding refund because audit was to be conducted was not tenable in the light of provision of S.177 of the Income Tax Ordinance, 2001. Moreover this provision did not envisage withholding of refund on the basis of any subsequent proceedings. The main issue involved is whether the complainant's income is exempt from tax. If so the refund is to be issued".

6. The FTO concluded that this was case of maladministration and made the following recommendations:

"It is, therefore, recommended that:-

- i. The complainant's application of refund be disposed of forthwith.
- ii. Compliance to be reported within one month from the date of receipt

of findings".

7. The FTO has repelled the reasons advanced for withholding the refund on the ground that an audit was required to be conducted in this case. The FTO

8. One finds that the delay in this case is patent. There was no legal cover for causing it. The recommendations made by the FTO are just and proper and should sustain.

9. Accordingly, the President has been pleased to reject the representation of the Agency.


(Muhammad Hashim Abro)
Section Officer

Copy to:-

1. The Registrar, Federal Tax Ombudsman's Secretariat, Islamabad.
2. Director (Legal), President's Secretariat (Public), Islamabad with reference to their No.83/FTO/2009, dated 1.02.2010.
3. Mr. Muhammad Arif, 243-A, GOR-V, Faisal Town, Lahore.


(Muhammad Hashim Abro)
Section Officer