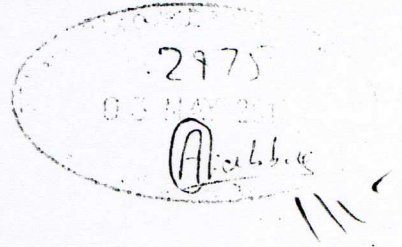


No.04/2009- Law-I (FTO)
Government of Pakistan
Ministry of Law, Justice and Parliamentary Affairs



Islamabad, the 7th April, 2010

From :- Gulzar Hussain Raja
Section Officer.

To:- The Second Secretary (TO-I)
Federal Board of Revenue
Islamabad.

Sub: REPRESENTATION UNDER SECTION 32 OF THE
ESTABLISHMENT OF THE OFFICE OF THE FEDERAL TAX
OMBUDSMAN ORDINANCE (XXXV OF 2000) IN COMPLAINT
NO. 1173-I/08 (FBR VS M/S MALIK FERTILIZER TRADERS
NAROWAL)

I am directed to refer to your representation No.4(1173)S(TO-I)/08, dated 15.01.2008 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 his selection for detailed audit under the Income Tax Ordinance. The objection was based on the fact that the complainant had filed representation against the same before the Member FBR who was sitting over the case and was not deciding it. In the mean while the Agency (FBR) proceeded with the audit of his income tax affairs. The FTO stopped the Agency from proceeding with the audit before the Member gives his decision on the representation of the complainant. This has given a cause to the Agency to file the present representation.

3. The findings of the FTO are brief and are reproduced below:

"In these cases, mal-administration has been alleged against selection of cases for detailed audit. Learned counsel for the complainants during the hearing of the cases pointed out that representations were made before the FBR against the act of selection of the cases for detailed audit but upto today, no decision has been made and the audit proceedings are intended to be commenced which will prejudice these complainants. The DR says that the said representations are pending before the FBR and have not yet been decided.

The FBR shall decide the said representations as early as possible and till the said representations are decided, audit proceedings would not be commenced".

MT
45
mej

116
4. The main ground taken in the representation was that as this matter related to assessment of tax the jurisdiction of the FTO was ousted and consequently he could not stay the audit proceedings on any ground.

5. Audits are conducted under Section 177 of the Income Tax Ordinance 2001 relevant portion of which reads as follows:

“¹[177. Audit.- (1) The ²[Board], may lay down criteria for selection of any person for an audit of person's income tax affairs, by the Commissioner.

(2) The Commissioner shall select a person for audit in accordance with the criteria laid down by the ³[Board] under sub-section (1).

(3) The ⁴[Board] shall kept the criteria confidential.

(4)

(5)

(6)

(7)

(8)

(9)”

6. The Commissioner is authorised to select a person for audit of his income tax affairs under the provisions of sub section 1(a) of Section 177 of the Income Tax Ordinance.

7. The complainant in this case was not questioning the merits of the assessment nor was he challenging the authority of the Commissioner in the matter of selection. His only grievance was that the Federal Board of Revenue having not laid down a criteria for selection of a person for audit of income tax affairs the Agency could not proceed with the audit. His return related to the year 2007 before an amendment was brought by the Finance Ordinance of 2007 deleting this requirement of criteria.

8. In its representation the Agency has no where stated that the requirement of the criteria as envisaged by Section 177(1) of the Ordinance had been fulfilled. The Agency has also not explained why its Member was sitting over the representation of the complainant. Delay is it self an element of maladministration and the FTO can take cognizance in a matter where delay is alleged. Obviously, when the FTO takes cognizance of a matter he has to provide a proper relief against maladministration. This has been done by the FTO who did not touch upon the merits of the assessment in this case. To say that the case was covered under the provisions of Section 9(2) of the FTO Ordinance is, therefore, not correct. It is for the Chairman, FBR to investigate why the Member FBR had caused delay in the case. He should submit a report on this to the FTO in six week time.

9. The findings of the FTO are just and proper and do not call for any interference.

10. Accordingly, the President has been pleased to reject the representation of the Agency while directing the Agency to send its report to the FTO in six week time pursuant to the requirements reflected in the preceding para.

(Gulzar Hussain Raja)
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.19/FTO/2010, dated 08.03.2010.
3. Malik Zulfiqar Ali, Proprietor Malik Fertilizers Traders, Darman Road, Shakargarh

(Gulzar Hussain Raja)
Section Officer