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FEDERAL TAX OMBUDSMAN SECRETARIAT
State Enterprises Complex,
5-A Constitution Avenue, Islamabad.
Tele: 9212316, 9212318, 9212321 & 9212328. Fax: 9205553.

Dated: 04-10-2012

WP No. 11545/2012

To

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The Chairman,
Federal Board of Revenue,
Islamabad.

Subject: Lahore High Court, Lahore Decision in the case of Muhammad Saleem Vs. FTD - Forwarding of

Find enclosed herewith Lahore High Court Lahore's decision in WP No.11545/2012 announced in the case cited as subject for placing the same on FBR website.

2. Compliance report be submitted within 3 days.

[Handwritten Signature]

REGISTRAR
F.T.O. Sectt.
9202789

Copy to:

Secretary to FTO Islamabad.

Chief (L)
SS (Lita)
SS (SDT)
SS (L)
SS (LIDT)
SS (I.DT)
SS (TO-I)
SS (TO-II)
SS (Lita)
PS

FBR e-Box No 132067
Received in M(L) Office on 08-10-12

[Handwritten Signature]
8/10/12

SS (TO-I)

ORDER SHEET**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No:

WP No. 11545-2012

Versus

Muhammad Saleem

F.T.O etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties' counsel, where necessary.
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13.09.2012. Mr. Ijaz Ahmad, Advocate for and alongwith petitioner.
M/s. Asif Vardag and Hafiz Ehsan Ahmad Khokhar,
Advocates for respondents.
Mr. Waheed Shahzad Butt, Advocate for respondent in
connected petition -

The impugned notice questions the order passed by the petitioner on 29.06.2011 under Section 122(5A) of the Income Tax Ordinance, 2001 ("Ordinance") to amend a deemed assessment made on the filing of the return: whereby a refund due to the assessee under the deemed assessment and affirmed by Commissioner (Appeal) on 30.08.2010 has been amended with the effect of denial of refund. The principal objection of the petitioner is that his order under Section 122(5A) of the Ordinance is passed in lawful exercise of jurisdiction and can be challenged only by way of appeal under Section 127 of the Ordinance.

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2. On the other hand, learned counsel for the respondents has referred to the provisions of Federal Tax Ombudsman Ordinance, 2000 ("FTO Ordinance") and emphasized the provision of Section 29 thereof creating a bar of jurisdiction to question the proceedings of the FTO as well as Section 14 of the said Ordinance investing powers on the FTO to summon any person in relation to matters pending before him. He submits that the impugned notice dated 02.05.2012 merely seeks an explanation from the petitioner on the point that a refund held due to the complainant assessee by Commissioner (Appeal) on 30.08.2010 has been set at naught on 29.06.2011 by the petitioner's questioned order. As a result, the assessee has been deprived of a right that had accrued to him and it is in the fitness of things that FTO should obtain an explanation on the validity of the grounds to interfere in the refund order by the petitioner. He assures that the petitioner would be heard in accordance with law and if he gives a satisfactory

explanation, the FTO would not proceed further in the matter.

3. After hearing the learned counsel for the parties, it appears that the principal objection on behalf of the petitioner is that his order dated 29.06.2011 ought to have been assailed in appeal under Section 127 of the Ordinance rather than before the FTO. The remedy before the FTO is not subject to restraint and may be availed concurrently or in derogation of any other right of challenge available under the law. However, it is essential that FTO can only interfere in a matter where maladministration as contained in Section 3 of the FTO Ordinance is made out. Other than that, there is no harm if an officer is called upon to render an explanation on the grounds for his interference in the matter.


4. It goes without saying that if the petitioner has valid grounds, the same shall be duly attended and an order in writing shall be passed strictly in accordance with law after hearing the petitioner.

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5. Petition disposed of.



CHIEF JUSTICE

 Naveed*
03/10/12