

No.47/2011-Law (FTO)
Government of Pakistan
Ministry of Law and Justice

Islamabad, the 16th July, 2012

From :- Arshad Ali Siddiqui,
Section Officer (Law-I),

To:- Mr. Muhammad Ashfaque,
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.195/ISD/IT(160)1323/10 (M/S M.K. & ASSOCIATES ISLAMABAD VS FBR).**

I am directed to refer to your representation No. 4(1323)To-I/2010 dated 30th April, 2011 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. The complainant a person rendering services filed his returns for the tax years 2004, 2005 and 2006 which were finalized under Section 120 of Income Tax Ordinance 2001. An Additional Commissioner amended the assessment under Section 122(5A) of the said Ordinance holding that the complainant is a contractor and falls under PTR. This decision was set aside by the CIT (Appeals) on 29.2.2008. The Agency (Revenue Division) filed a appeal before ITAT which was allowed and the case was remanded back with the direction to bifurcate the receipts under PTR and those falling under services. The matter was re-examined and further demands were created for the said tax years. The CIT (Appeals) allowed the appeal of the complainant and set aside the said reassessment. The case was again remanded by ITAT on appeal of the Agency vide order dated 17.3.2010 with a direction to pass a detailed order by bifurcating the supplies and services. An Additional Commissioner (Audit-III) Islamabad passed an order on 23.9.2010 holding that the entire receipts were for services. The income was accordingly determined for the said years as a result where of refund of Rs.1,658,771/- for tax year 2004, Rs.2,431,270/- for tax years 2005 and Rs.3,690,787/- for tax year 2006 was created. Feeling aggrieved of the non-issuance of the refund, he approached the FTO. The Agency took the plea that the ITAT held that the receipts fell under PTR and no refund was due. It was also alleged that the orders dated 23.9.2010 and 29.9.2010 of the Additional Commissioner are under process of rectification.

3. The FTO recorded the following findings:

"The order passed on 23.9.2010 and 29.9.2010 by the Additional Commissioner, RTO, Islamabad in furtherance of directions of ITAT required implementation by 23.11.2010 and 29.11.2010 respectively, as per Section 170(4) of the Income Tax Ordinance, 2001, but the same has not been done as yet. Delay in implementation and consequent issuance of refund is tantamount to maladministration u/s 2(3)(i) and (ii) of the FTO Ordinance, 2000."

Following recommendations were made by the FTO:

FBR to direct the Chief Commissioner to-

- (i) ensure that the refund is issued with compensation due, as per law, within 21 days."

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1. Present representation has been filed by the Agency.

5. The representation does not disclose any grievance. Jurisdiction of the FTO ~~however, has been objected to and it has been reiterated that the income of the complainant~~

6. The history of the case has already been narrated above. The ITAT never held any receipts of the complainant to be falling under PTR, on the other hand direction was repeatedly made to bifurcate the receipts which was ultimately done vide orders passed on 23.9.2010 and 29.9.2010 by the Additional Commissioner. The findings also disclose that the Agency twice sought adjournment to amend the reply but failed to do so. In view of the history of the long litigation and the ultimate decision of the Agency itself a ground is hardly made out for interference with the findings and recommendations of the FTO. The impugned findings do not determine any of the questions falling within the ambit of Section 9(2)(b) of the FTO Ordinance 2000. It has been found as a fact by the Agency itself that all receipts of the complainant are for services rendered.

7. Accordingly, the President has been pleased to dismiss the representation of the ~~Agency~~.


(ARSHAD ALI SIDDIQUI)
Section Officer (Law-I)