

No.117/2009-Law (FTO)
Government of Pakistan
Ministry of Law and Justice

Islamabad, the 16th July, 2012

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From :- Arshad Ali Siddiqui,
Section Officer (Law-I),
To:- Mr. Muhammad Irshad,
Chief (Legal),
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.1318/2008 (M/S M. K. ASSOCIATES ISLAMABAD VS FBR)

SS (To-I) 17.7.12

P-90/2

I am directed to refer to your representation No. 4(1318)To-I/2008 dated 15th October, 2009 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. The complainant feeling aggrieved of non-payment of income tax refunds of Rs.1,290,003/- for the tax year 2001-2002 and Rs.1,551,569/- for the tax year 2002-2003 approached the FTO. Facts disclosed in the course of hearing are that the assessing officer denied the refund treating the tax withholdings as final discharge of tax liability finding that the complainant is covered by Presumptive Tax Regime PTR. The CIT (Appeals) allowed the appeal of the complainant holding the receipts to be outside the PTR. However, an appeal filed by the Agency (Revenue Division) was allowed by ITAT in as much as case was remanded with directions to bifurcate the payment under the two heads i.e. supply and services. The assessing officer held all the receipts to be for services and the refund was accordingly created. This assessment was cancelled by CIT Islamabad under Section 122A of the Income Tax Ordinance 2001. The appeal of the complainant was allowed and the said order was set aside. This order was not questioned by the Agency in any further appeal. It was argued on behalf of the Agency that since an order dated 12.2.2008 had already been passed giving effect to the order passed under Section 122A of the said Ordinance, the complainant has no case for refund. The FTO agreed with Agency and dropped the proceedings on 9.10.2008.

3. The complainant filed a review application pointing out that the order on the basis whereof the taxation officer passed the order dated 12.2.2008, relied upon by the Agency, has itself been set aside by the CIT (Appeals). There being an error apparent on the face of the record the FTO allowed the review on 2.12.2008 making the following recommendations:

- i. the Secretary, Revenue Division to direct the concerned officer to pass order u/s 122A/221 of the Income Tax Ordinance 2001 to cancel the order dated 12.2.2008 passed by the Taxation Officer and issue the due refunds within 30 days of the receipt of these recommendations as per order dated 29.3.2007."

4. The Agency filed a second review application to question the said order dated 2.12.2008 which has been dismissed by the FTO on 9.9.2009.

FBR
Recd. in the Legal Office
on 17-7-2012

5. Present representation has been filed by the Agency.

6. It has been contended that the FTO lacked jurisdiction in the matter. There is no denial that the Order passed by the Commissioner (Enforcement) under Section 122A of the said Ordinance had been set aside by the CIT (Appeals) vide order dated 29.2.2008. There is also no denial that the taxation officer's order dated 12.2.2008 was based on the said extinct order of CIT (Enforcement). This being the admitted factual position, no question within the meaning of Section 9(2)(b) of the FTO Ordinance 2000 arose for decision by the FTO. No grounds whatsoever are made out for interference with the findings and recommendations of the FTO.

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


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

Copy to:-

1. The Registrar, Federal Tax Ombudsman Secretariat, Islamabad.
2. Director (Legal), President's Secretariat (Public), Islamabad with reference to their No.47/FTO/2012, dated 9th July, 2012.
3. Mr. Majid Masood Khan, C/o. Tax Centre, Flat No. 3, 1st Floor, (80-W) Malik Complex, Blue Area, Islamabad.

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