

No.110/2009-Law (FTO)
Government of Pakistan
Ministry of Law and Justice

Islamabad, the 11th July, 2012

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

To:- Mr. Bilal Ahmed,
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.270-L/2009 (M/S
TILA LABOUR SERVICES CONTRACTOR VS FBR)

I am directed to refer to the Federal Board of Revenue, Islamabad representation No. 4(270)TG-I/09 dated 07.10.2009 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. Feeling aggrieved of non-issuance of refund due for tax years 2004, 2005 and 2006 the complainant filed the present complaint. In response the Agency took the plea that since the complainant derived his income as "labour contractor" he was covered by Presumptive Tax Regime (PTR) and was not entitled to claim any refund.
3. The FTO heard the parties. With reference to a judgment of the Lahore High Court FTO found the plea of the Agency to be not tenable. Following recommendations were made by the FTO on 05.9.2009:
 - (i) the refund application filed by the Complainant shall be deemed to be pending and shall be sanctioned in the light of observations made in the foregoing para 3 & 4.
 - (ii) compliance report be submitted in this office within a period of 30 days of the receipts of this recommendation."
4. Present representation has been filed by the Agency.

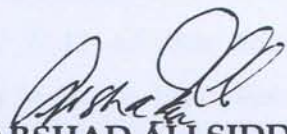
5. It has been reiterated that the facts of the judgment relied upon by the FTO were distinguishable as it pertained to carriage contractors.

6. Section 153(1)(b) of the Income Tax Ordinance 2001, on which the reliance has been placed by the Agency originally read as follows:

“for the rendering of professional services”.

The word “professional” was omitted by the Finance Act 2002 and consequently the said provision now includes a person rendering any sort of services. There is no dispute that the complainant is a person rendering or providing services. This being the legal position known to all concerned, the FTO has correctly found the act of Agency to be maladministration. No grounds stand 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.38/FTO/2012, dated 9th July, 2012.
3. Ch. Fayyaz Mehmood, Advocate High Court, Street No.4, Block No.3, Khanewal.

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