

No. 07/2010 -Law (FTO)
Government of Pakistan
Ministry of Law and Justice

Islamabad, the 31st July, 2012

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

To:- Mr. Aijaz Hussain, Director M/s Sindh Land Development Pvt Ltd,
Umer Kot Road,
Mirpur Khas.

Sub: REPRESENTATION UNDER SECTION 32 OF THE ESTABLISHMENT OF THE OFFICE OF THE FEDERAL TAX OMBUDSMAN ORDINANCE (XXXV OF 2000) IN COMPLAINT NO.413-K/2009 (M/S SINDH LAND DEVELOPMENT (PVT) LTD MIRPURKHAS VS FBR)

I am directed to refer to your representation No. Nil dated 2.1.2010 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. The complainant is an Association of Persons (AOP). It owns a cotton ginning and pressing factory and oil milling unit at Mirpur Khas. The grievance arose to the complainant on being selected for purposes of audit under Section 177(4) of the Income Tax Ordinance 2001 followed by subsequent notices.

3. The matter related to tax year 2008. According to the complainant his case was covered under the Presumptive Tax Regime (PTR). He filed statements for the preceding years under the PTR which were accepted by the audit without making amendment, under Section 122 of Income Tax Ordinance 2001. It was further the case of the complainant that in view of the CBR Notification/SRO-629(1)/94 dated 27.06.1994 the deduction of withholding tax on cotton and cotton seed oil is to be treated as a full and final tax liability incurring no further tax.

4. The complainant referred to another FBR Circular dated 5.10.2009 with instructions that the cases other than individuals covered by the PTR were not to be selected for audit unless there were strong reasons for such selections. According to the complainant any discrepancy could be addressed through recourse to section 122 of the Income Tax Ordinance 2001 which authorizes a Commissioner to amend an assessment. The case of the Agency was formulated by the FTO in the following words:

"The department has responded to the A.R's claim as under:

...it is incorrect that the case of M/s Sindh Land Development (Pvt) Limited is totally covered under Presumptive Tax Regime/Final Taxation for Tax Year 2008. The taxpayer has himself offered following data through his return of total income/accounts for taxation:

a)	Total Turnover	Rs.216252690
b)	Turnover offered under PTR	Rs.177357936
c)	Turnover not offered for tax	Rs.38894754

The above referred residual turnover of Rs.38894754 was not offered for taxation on the ground that it pertained to 'exempt' sale of cotton seed, Oil cake and gad. The claim of such exemption was made on the basis of SRO 586(1)/91 dated 30th June 1991 and C.No.1(14)DT-14/91 dated 27-6-1994.

FRR e-Dox No

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received in M(L) Office on 06-08-12.

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The exemption on these by-products had been allowed for specific year(s) in consideration of agreement between Pakistan Cotton Ginners Association and Federal Board of Revenue (Assessment years 1992-93 to 1994-95). Without prejudice to above, presently there is no such exemption provided in Second Schedule to the Income Tax Ordinance, 2001.

The department has further stated that

... "With regard to the agreement of Hyderabad Tax Bar Association and the Director General, Regional Tax Office, Hyderabad, it is informed that this agreement is applicable on the cases/returns of income up to Tax Year 2007. Apart from this it is also pointed out that this agreement also provides for selection of PTR cases where facts are wrongly declared in the statement.

The contention that the taxpayer's return of income Tax Year 2008 falls under PTR regime does not hold ground as there is still a turnover of Rs.38894754 which has not been offered for tax purposes in the statement filed for Tax Year 2008."

5. The Agency was of the view that the case of the complainant was not covered by the Circulars. The complaint was rejected by the FTO with the following observations:

"In view of the above position, as the Complainant's case is neither covered by 1994 agreement nor the agreement of 2009, no maladministration can be attributed to the department. Moreover, the Supreme Court judgment in PLD 20006 SC 787 is already there that selection of a case for audit can be made under such like circumstances."

6. This representation has been filed by the complainant.

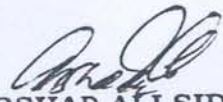
7. The record discloses that the matter had been proceeded with in accordance with Section 177 of the said Ordinance. Besides, an explanation to the satisfaction of the FTO was given by the Agency for selecting the case of the complainant for audit under the said provision of law. The findings and recommendations also appear to have support of comments offered by the complainant. No grounds stand made out for interference with the findings and recommendations of the FTO.

8. Accordingly, the President has been pleased to reject the representation of the complainant.

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

Copy to:-

1. The Secretary, Wafaqi Mohtasib Secretariat, Islamabad.
2. Director (Legal), President's Secretariat (Public), Islamabad with reference to their No.26/FTO/2012, dated 9th July, 2012.
3. The Chairman, Federal Board of Revenue (FBR), Islamabad.


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