

No. 26/2010-Law (FTO)
Government of Pakistan
Ministry of Law and Justice

Islamabad, the 27th July, 2012

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

To:- 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)

I am directed to refer to your representation No. 4 (641) TO-I/2009 dated 6.2.2010 on the subject noted above and to say that the President has been pleased to pass the following orders.

2. This order will dispose off the following representations filed by the Agency (Revenue Division):

S.#	Name of Complainants	Complaint No.	Law Division Summary No.	PS (P) File No.
1.	Niaz Ahmed Carriage Service Contractor	641-L/09	26/10-Law(FTO)	13/FTO/11
2.	Muhammad Hayat Khan Carriage Service Contractor	643-L/09	30-A/10-Law(FTO)	14/FTO/12

3. Feeling aggrieved of the delay in the issue of refund by the Agency (Revenue Division) the complainants in above captioned complaints approached the FTO. The Agency questioned the jurisdiction of FTO. On merit it was stated that the deduction certificates filed by the complainants were incomplete and withholding agents have been requested by the Agency to verify the claim and that upon receipt of the complete certificates the refund applications shall be disposed off as per law. In the course of hearing the Agency took the plea that deductions were in fact made under Section 153(1)(b) of the Income Tax Ordinance 2001 and this being final tax liability the complainants were not entitled to refund.

4. It was submitted on behalf of the complainants:

"that the matter regarding adjustability or finality of tax deduction in respect of labour /carriage contracts was contested in the Lahore High Court which had been dismissed, whereas Sindh High Court held such deductions as final tax liability. Although the Supreme Court of Pakistan had granted leave to appeal against the decision of Lahore High Court but did not suspend the operation of the impugned order. The appeal before Supreme Court was to be fixed within a period of six months from the date of order o 29.09.2008 but it had not come up for hearing so far. The order of the Lahore High Court was in the field. Complainant also filed a copy of the DG, RTO's letter No.MN/SO-1-Legal/119/2167 dated 08.10.2009 showing on receipt of Recommendation of FTO in similar complaints (No.272, 273, 274 and 275-L/2009), refunds were issued.

5. The FTO made the following observations in para 4 of his respective findings in both the said cases:

"The issue raised in the complaint pertained to delay and non-payment of refund within the time prescribed under law, not the assessment of income and determination of liability. The respondent's preliminary objection was, therefore, not valid. Moreover, the refund application u/s 170 of the Income Tax Ordinance, 2001 was filed in the prescribed manner. The arguments put forth by the AR were also not rebutted on solid grounds by the DRs."

The FTO made the following recommendations in both the cases:

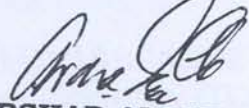
"As the Respondent, despite the grant of leave to appeal by the Supreme Court, had issued refunds in similar cases it is Recommended that:

i. The FBR to ensure that the process of verification was completed expeditiously and the refund application disposed of as per law within 21 days."

6. The present representations have been filed by the Agency.

7. The record has been perused. The FTO has not decided any question within the meaning of Section 9(2)(b) of the FTO Ordinance 2000. The direction to the Agency is for expeditious disposal of the refund applications as per law within 21 days (the date of findings is 31.12.2009). The complainant has also filed a copy of the judgment dated 22.2.2011 of the Supreme Court of Pakistan whereby Civil Appeals 1045 to 1052 of 2008 and 1183 to 1206 of 2010 filed by the Agency have been dismissed. This being so 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 representations 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.13/FTO/2012, dated 19th July, 2012.
3. Mr. Niaz Ahmed, Carriage Services Contractor, Ittefaq Sugar Mills Pakpattan Road, Sahiwal.

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