

Un-favourable

11-573E

PRESIDENT'S SECRETARIAT(PUBLIC)
AIWAN-E-SADR, ISLAMABAD

REPRESENTATION PREFERRED BY M/S OUTSOURCE RESOURCE (PVT) LTD, LAHORE
AGAINST FINDINGS / RECOMMENDATIONS DATED 3.12.2014 PASSED BY THE FTO
REVIEW PETITION NO.49/2014 IN COMPLAINT NO. 531/LHR/IT(294)/1011/2012

PS38/e

11 OCT 2016

M(L)

I am directed to refer to M.S. Babar and Associate letter dated 2nd August, 2016, on the above subject and to inform that the matter has been examined regarding revisit of the orders of the appellant forum already communicated vide this Secretariat's letter of even number dated 1.6.2016. — 526-527/e

2. It may be pointed out that Section 15 of Federal Ombudsmen Institutional Reform Act 2013, provides that **"Personal hearing.**-It shall not be necessary for the President or the Ombudsmen to give personal hearing to the parties and the matter may be decided on the basis of available record and written comments filed by the Agency." The President of Pakistan in Case No.F.267-WMS/2002 dated 30.7.2002 has already held that "the complainant has contended that he was not heard by the Mohtasib. Perhaps he intends to say that he was not heard orally. To afford hearing is an established principle of natural justice but hearing does not mean only to hear orally. Hearing includes hearing through papers, and in this case the complainant and the Agency have been heard through papers. This point fails."

3. The subject Representation dated 07.1.2015 was filed by M/s Outsource Resource Ltd, against the findings of the FTO dated 3.12.2014 in Review Petition through which the complainant's petition for Tax Year 2010 was dismissed and made the revised recommendations for Tax Year 2009 as follows:

Mf
31.10.2016

- Chief(L-I)
- S(Lit-SC)
- S(L&Auto)
- SS(T-I)
- SS(T-II)
- Chief(L-II)
- S(Lit-HC)
- SS(Lit-HC)
- S(LDT)
- S(LIDT)
- SPS

"FBR to:

- *direct the Chief Commissioner concerned to ascertain facts of refund claim for tax year 2009 by associating the complainant for disposal within 21 days, as per law; and*
- *report compliance within 07 days thereafter."*

4. There is no question on the facts that the jurisdiction of the FTO is barred u/s 9(2)(b) to investigate or inquire into the matter which relate to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulations relating to such assessment / determination in respect of which legal remedy of appeal or review or revision is available under the relevant legislation. In case the complainant was aggrieved of any action or inaction of the Agency, the complainant has the remedy to file an appeal to the Commissioner Appeals, Income Tax Tribunal, the High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. In such circumstances, where remedy of appeal was available, FTO could not interfere with and could not pass orders under garb of maladministration.

5. It has been settled by the Supreme Court of Pakistan in case of Mst. Kaniz Fatima reported in 2001 SCMR 1493, that where a particular statute provides self contained machinery for determination of questions arising under the statute and law provides a remedy by appeal or revision to another forum fully competent to give any relief, any indulgence to the contrary by any other forum is bound to produce a sense of distrust in statutory forums and writ petition will not be maintainable without first availing the alternate statutory legal remedy. The FTO has no jurisdiction to set aside the order where the forum of appeal is available to the complainant. Thus the impugned findings are not sustainable and the representation is liable to be accepted.

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6. It is an admitted position that the matter involves the determination of tax liability and refundable amount on account of tax. Such matters are appealable before the Commissioner (Appeal), Appellate Tribunal (IR), the High Court and the Supreme Court. Where remedy of appeal is provided under the law the FTO has no jurisdiction to investigate the matter in the name of maladministration. In case the complainant was aggrieved of any action or non action on the part of official(s) of the Agency, it has the remedy to file an appeal at appropriate forum under the relevant law.

7. It is as clear as the crystal that FTO has made recommendations which are only to direct the Chief Commissioner concerned to ascertain facts of refund claim for tax year 2009 by associating the complainant for disposal within 21 days as per law. It was just a harmless order and only the Agency was to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency had full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the findings of the learned FTO were sustainable and the Complainant had unnecessarily filed this representation. In such circumstances, the representation was liable to be rejected having no merits and the recommendations were sustainable and unexceptional. Thus FTO direction for the Chief Commissioner to ascertain facts of refund claim for the Tax Year 2009 by associating the complainant for disposal within 21 days, as per law were sustained by the appellant forum with assertion that FBR is fully empowered to decide the issue either way, on merits and in accordance with the provisions of prevailing law.

8. Undoubtedly, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Consequently, the Complainant's representation was liable to be rejected. However, the complainant can seek remedy available to him from the relevant forums under the law, if so desired.

9. In view of the foregoing, there is no need to revisit the decision of the appellant forum already communicated vide letter No.2/FTO/2015 dated 1.6.2016.

PS26-578/c

(Zulfiqar Hussain Awan)
Director (Legal-II)

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C/o M S Baber Advocate,
M/s Babar & Associates,
198 D/1, Model Town, Lahore

No.02/FTO/2015 dated 27th October, 2016

CC: 1. The Chairman, Federal Board of Revenue, Islamabad
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.

(Zulfiqar Hussain Awan)
Director (Legal-II)

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