

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

Federal Board of Revenue
Versus

M/s Zhongxing Telexom Pakistan (Pvt) Ltd, Islamabad

SUB: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS/RECOMMENDATIONS DATED 22.12.2016 PASSED BY THE FTO IN COMPLAINT NO. FTO-HQR/0000651/2016

I am directed to refer to your representation No.4 (0651)/TO-I/2016 dated 20.01.2017 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 20.01.2017 has been filed by the Agency/FBR against the findings of the FTO dated 22.12.2016, whereby it has been held that:

"FBR:-

- i. Direct the Commissioner to complete verification process and pass order U/S 170(4) of the Ordinance to settle the Complainant's refund claim, within 21 days; and
- ii. Report compliance within 07 days thereafter."

3. The brief facts of the case are that the Complainant, a service providing Telecom Company, contest non issuance of refund for the tax year 2014.

4. The Complaint was forwarded for comments to Secretary Revenue Division in terms of Section 10(4) of the FTO Ordinance 2000. In response, the FBR submitted its views vide letter dated 29.09.2016.

5. The AR claimed that the Complainant had e-filed return of income claiming refund of Rs.203,005,347/- on account, of deduction/payment of tax U/SS 153(1)(b), 148, 151,231 and 235 of the income Tax Ordinance, 2001 (the Ordinance). He further claimed that refund application was e-filed in the prescribed manner, followed by repeated reminders/submission of documents but no order u/s 170(4) of the Ordinance was passed to settle refund claim which amounted to maladministration under the provisions of FTO Ordinance, 2000. The AR prayed that the Deptt be directed to issue refund with compensation without further delay.

6. Reiterating written comments of the Commissioner IR dated 23.09.2016, the DR raised preliminary objection regarding bar of Section 9(2) of the FTO Ordinance contending that the Complainant could have filed appeal U/S 170(5) of the Ordinance before Commissioner (Appeals) in case refund claim was not settled within prescribed time limit. On merits, he submitted additional written comments with the contention that the Complainant had itself withdrawn the claim of refund on account of deduction of tax U/S 153(1)(b) of the Ordinance. This fact was confirmed by the Complainant's AR also. During the hearing, the DR was asked to verify the Complainant's claim of verification of tax payment regarding claim of refund for tax year 2014 and also claim of refundable amount for the previous years, together with adjustment of part of refund amount against the liability of tax for tax year 2015. In response, the DR contended that the Complainant had claimed refundable amount of Rs.78,814,572/- for tax years 2007 to 2014 and this "amount is claimed to have been adjusted by the Complainant against tax liability of tax year 2015, whereas the amount of refund claim for the period prior to tax year 2014 was Rs.12,499,813/as per Complainant's claim. The DR submitted that a notice has been issued to the Complainant to submit year wise details of refund claims with evidence of tax payment. He further contended that refund claim amounting to Rs.2,192,945/- on account of tax deduction U/S 235 of the Ordinance has been withdrawn by the Complainant. He pleaded that as soon as verification of tax payments/documents was completed, the Complainant's refund claim would be settled in accordance with the provisions of law. The AR controverted DR's claim that claim of refundable amount on account of deduction of tax U/S 235 of the Ordinance was withdrawn. He explained that this claim has not been withdrawn but the same has been deferred due to the reason that out of hundreds of electricity bills, only a part of these bills could be traced from the previous record and the remaining bills would be presented to the Deptt as and when these bills become available. However, the AR conceded that claim of deduction of Minimum Tax on providing services U/S 153(1)(b) of the Ordinance has been withdrawn by the Complainant in the light of decision by this office in identical cases as endorsed by the Honourable President.

7. Both parties heard and record perused by FTO. Thus FTO has issued aforementioned findings.

8. The instant representation has been filed by FBR. The Agency has mentioned the grounds of representation that Section 170(5) of the Income Tax Ordinance provides "[5) A person aggrieved by-

- a) An order passed under Sub Section (4); or
- ✓ b) The failure of the Commissioner to pass an order under subsection (4) within the time specified in that sub section, may prefer an appeal under Part III of this Chapter.] ✓

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9. The Agency has pointed out that the Honourable President of Pakistan while deciding the Representation Preferred by the FBR against the Review Petition Findings/Recommendations dated 21.06.2016 in complaint no 39/ISD/IT(35)42/2010 on 07.11.2016 has been pleased to hold:

“... Para 28. 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 of 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.

10. The Agency has apprized that the Honorable FTO had given findings on the matter which were appealable before the Commissioner Inland Revenue (Appeals) in terms of section 170(5) of the income Tax Ordinance 2001 and matter was beyond the jurisdiction of FTO in terms of section 9 of the FTO Ordinance 2000. The Honorable FTO reliance on Presidential Order No.55/2007-LAW (FTO) dated 31.07.2008 is misplaced as admittedly as per FTO order, taxpayer had himself conceded that tax u/s 153(1)(b) and 235 was not to be refunded. Hence, question of, “omission without a just cause” on the part of department does not arise.

11. The Agency has apprized that the taxpayer’s return for tax year 2012 and 2013 were scrutinized, which revealed the taxpayer claimed excess withholding of taxes. Taxpayer was requested to produce evidence in support of withholding taxes/deduction claimed by it in the Income Tax return. By due date taxpayer could not produce complete evidence of withholding. Therefore necessary remedial action under Income Tax Ordinance 2001, are to be initiated. The culmination of the above proceedings would determine the amount of any refund or tax liability.

12. The Agency has prayed that the Honourable President of Pakistan may be requested to set aside the recommendations of Honourable FTO.

13. On the other hand, the Complainant has filed comments against the instant representation of Agency on 23.02.2017 and supported the impugned recommendations/findings of learned FTO with request that the representation of Agency may be rejected.

14. After perusal of record and examination of all documents, it has been observed that 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.

15. 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.

✓ 16. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Thus FTO having gone beyond the scope and powers, the impugned findings are not sustainable. Consequently, the Agency’s representation is liable to be accepted. However, the complainant can seek remedy available to him from the relevant forums under the law.

17. Accordingly, the President has been pleased to accept the representation of the Agency and set aside the impugned recommendations/findings of learned FTO.

(Zulfiqar Hussain Awan)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.42/FTO/2017 dated 02.05.2017

Copy for information to:

1. M/s Zhongxing Telecom Pakistan (Pvt) Ltd, Plot No. 360, Street No. 5, I-9/3, Islamabad.
2. UHY Hassan Naeem & Co, Chartered Accountants, West Lower Ground, 19-A, Pak Plaza, Fazal-e-Haq Road, Blue Area, Islamabad.
3. The Registrar, Federal Tax Ombudsman Secretariat, Islamabad,
- ✓ 4. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal)

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