

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

M/s Jehangir Yousaf Meer, Gujrat, Versus FBR

**REPRESENTATION PREFERRED BY M/S JEHangIR YOUSAF MEER, GUJRAT AGAINST FINDINGS / RECOMMENDATIONS DATED 10.06.2016 PASSED BY THE FTO IN COMPLAINT NO. 171/LHR/ST(39)/517/2016**

I am directed to refer to your representation No. NIL dated 04.01.2017 on the above subject and to say that the President has been to pass the following order:

This Representation dated 22.12.2016 has been filed by the Complainant, M/s Jehangir Yousaf Meer against the findings of the FTO dated 10.06.2016, whereby it has been held that:

**"FBR to direct the Chief Commissioner, RTO, Sialkot to:-**

- i. Refund the recovered amount to the complaint within 15 days.
- ii. Initiate appropriate disciplinary action against the concerned officer responsible for recovery in this case; and
- iii. Report compliance for no. i, within 07 days and for no. ii, in 45 days."

The brief facts of the case are that the complaint is filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (the Ordinance) against illegal recovery of demand of Rs. 89,198/- ordered vide Assessment Order No. 90/ST/2013-14 dated 07.04.2014 by attaching the bank account of the complainant despite impugned order having been remanded back by CIR (Appeals), Sialkot vide Order-in-Appeal dated 25.11.2014.

When confronted in terms of the provisions of section 10(4) of the ordinance, the CIR vide comments dated 13.05.2016 stated that assessment order dated 07.04.2014 was passed on account of payment of sales tax for the tax period June 2013 and the same was properly served on the registered person and recovery proceedings were later initiated under the Sales Tax Act 1990(the Act). It was further pointed out that the CIR(A) had remanded back the case for re-examination and re-assessment but the taxpayer has failed to join there- assessment proceedings. Both the parties heard and record perused by FTO. Thus FTO has issued aforementioned findings.

5. The hearing of the case was held on 21.2.2017. Hafiz Muhammad Qasim Haroon, Deputy Commissioner has represented the FBR. On the other hand, Mr. Jehangir Yousaf Meer, representative of the Complainant has appeared for the hearing on the specific issue.

6. The instant representation has been filed by Complainant. The Complainant has taken ground that they are surprised that more than half year has been passed after they received said FTO's order passed by the learned FTO in said complaint but yet no compliance is made. Instead of making compliance of said FTO's order tax department officials misusing their powers and making more illegal decisions. The said appellate order reproduced as, "the learned commissioner (appeal) inland revenue, Sialkot has remanded back the case with the directions that department must re-examine and re-assess the Sales Tax liability at the request letter of the departmental officer for e-assessment and re-examination. If the contention of the taxpayer gets proved, the demand will stand deleted accordingly otherwise the demand will stand upheld".

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7. The complainant has mentioned that it is regretted that before compliance of FTO's said order, DCIR concerned before paying back full recovered amount has issued notice No. ST/Assess (short payment) unit06/16-69 dated 29.08.2016 for reassessment proceedings which is quite illegal, biased, and immoral and against natural justice.

8. The complainant has expressed that the failure of the tax department to associate the complainant in the disposal of reply letter submitted and the hurried, unilateral disposal of the reply letter casts enough doubt on the fairness of the sales tax new assessment order made by the tax department in this regard was therefore not tenable in law. Reliance is also placed on [PLJ 2008 SC 1088] where it has been held that principle of natural justice has to be observed if the proceedings might result in consequences affecting "the person or property or other right the parties concerned". Consequently of non-adherence to the above canon of natural justice have been held to be as follows:

- i. An adverse new assessment order without affording an opportunity of personal hearing is to be treated as a void order [2005 SCMR 1814]
- ii. Its violation is always considered enough to vitiate even the most solemn proceedings [2005 SCMR 678]

9. The complainant has pleaded that it is also a fact that he has requested for compliance of FTO's order first in his reply submitted to department than re-assessment proceedings be initiated as full amount of the taxpayer is in custody of the tax department in absence of any assessment order by the FTO's order. The complainant brought the matter to the notice of the IRO for re-assessment but the same was dismissed summarily without giving the complainant opportunity of being heard, as envisaged in law. Failure to associate the complainant when the reply submitted was taken up for disposal is a denial of the right of being heard and the unilateral decision in this regard was therefore not tenable in law.

10. The complainant has prayed to save him from this cruelty and injustice and illegal action taken by the DCIR, IRO concerned and tax department by instructing him the following orders:

(i) to set-aside illegal new assessment order No. 01/2016-17 dated 25.11.2016 passed by junior IRO (Mr. Munir Ahmad) violating the learned CIR(A) Appellate order enhancing the assessed amount against OIO during FTO's order implementation on the basis of notice issued by his superior DCIR (Hafiz Muhammad Qasim Haroon) concerned on legality or proprietary grounds. The new assessment order under consideration was initiated to safe guard the illegal recovered amount in absence of any assessment order and clear violations of implementations of learned FTO'S order.

(ii) direct the DCIR (Hafiz Muhammad Qasim Haroon) concerned to payback the illegal recovered amount in absence of any assessment order at once as per said order of learned FTO before re-examination and re-assessment proceedings initiated as per said order of learned Commissioner Appeals, Sialkot. Because re-assessment has not been made before illegal recovery at our request letters.

(iii) direct the DCIR concerned or any tax official to stop issuing further notices fore-assessment until the illegal amount recovered should not be paid back in the light of learned FTO's order.

(iv) pay compensation since from January 2016 for the illegal recovered amount and disturbance occurred in business payments by instructing banker to debit block their business account as deemed appropriate in the eye of law and justice;

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(v) direct the Chief Commissioner to ensure that the said FTO's decision is implemented in letter and spirit without prejudice to a just and fair outcome of the learned CIR(A) appellate order proceedings;

(vi) call for explanation of the officials concerned for rejecting the reply submitted vide letter no: J&A/Anmol/ST/2016/04 dated 11.11.2016 of the complainant, violating rules of natural justice.

(vii) contempt of court and defiance of learned FTO's recommendations proceedings may be initiated as tax department is not making compliance of FTO's order yet.

(viii) proceedings u/s 22 of FTO ordinance 2000 for cost and compensation may please be initiated for seeking justice against illegally recovered amount and hearings attended at Lahore Office.

11. On the other hand, the representative of the Agency has argued that the representation has been filed by Mr. Jehangeer Yousaf Meer Resident of Gujrat who is neither proprietor of the business concern nor is an authorized representative of the registered person. He has never filed any power of attorney. It is worthwhile to mention that Mr. Jehangeer Yousaf Meer is neither an advocate nor authorized legal practitioner, hence the representation filed by him is un-lawful and not entertainable under the law. The honorable FTO passed order in this case on 10.6.2016 against which the registered person could file representation u/s 32 of the FTO Ord. 2000 within 30 days of the receipt of order but he has filed the representation on 22.12.2016 which is miserably time barred. In the representation the complainant has agitated the re-assessment which is appealable u/s 45B of the Sales Tax Act 1990. If the petitioner has any grievance regarding the implementation of the findings/recommendations of the FTO then he should approach the office of FTO for implementation.

12. The representative of the Agency has mentioned that the learned Commissioner IR (Appeals) Sialkot vide Order in Appeal No.29-ST/2014 dated 25.11.2014 remanded back for re-examination and re-assessment with the instructions to the appellant to produce the complete supply record to the deptt. The complainant has been failed to produce the requisite record for re-assessment despite of the fact that the subject order was received by him on 5.1.2015 and in the absence of requisite record DCIR considered the order in original as upheld as per CIR(A) order. Therefore the DCIR issued notices for recovery of outstanding tax demand u/s 48 of the Sales Tax Act 1990.

13. The representative of the Agency has apprised that to comply with the recommendations contain in the order of the FTO the registered person was requested through following letters to provide refund application u/s 66 of the Sales Tax Act 1990 read with chapter v of the Sales Tax Rules 2006, bank account certificate duly attested by the concerned bank branch as laid down in the law to enable the deptt to issue refund in the instant case:-

Letter No.	Dated
996	29.6.2016
14	25.7.2016
35	10.8.2016
39	12.8.2016
10	21.10.2013

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14. Despite proper service of above notices, the registered person failed to file the application for refund and other documents legally essential in terms of Section 66 read with Rules 38(3) and 30(5)(6)(7) of chapter V of the Sales Tax Rules 2006 for issuance of refund. Therefore refund in this case could not be issued. However later on re-assessment as directed by the learned CIR(A) was completed and as a result of this order further demand of Rs.26,622/- is payable by the registered person details of which has been given in re-assessment order as discussed **In Para supra above the registered person** was requested time and again to file refund application and other supporting documents so that Sales Tax refund could be issued but the registered person failed to file refund application in the absence of which the department was helpless to issue sales tax refund electronically.

15. The representative of the Agency has narrated that Mr. Munir Ahmed IRO is not subordinate officer of DCIR Hafiz Qasim Haroon. He is in-charge of unit-16 Gujrat and re-assessment order in the case was passed by him after providing several opportunities of being heard to the registered person but no one attended the office. Only two replies were filed by Mr. Jehangeer Yousaf Meer who is not even authorized representative of the registered person without any supporting documents which are not legal replies being filed by an unauthorized person. However, the same replies were even then considered at the time of passing re-assessment order in this case as directed by the worthy CIR(A). The re-assessment in this case was completed strictly in accordance with law. It is worth mentioning that re-assessment was made as directed by the FTO during implementation proceedings. It is further added that a copy of re-assessment order was also sent to the FTO as per directions.

16. The representative of the Agency has expressed that at the time of recovery proceedings the jurisdiction of the case vested with Hafiz Qasim Haroon and as discussed above Munir Ahmad IRO is not subordinate of Hafiz Qasim Haroon DCIR. Due to change in jurisdiction the case was transferred to Mr. Munir Ahmad IRO unit 16, Gujrat. While completing re-assessment proceedings directions of the learned CIR(A) were strictly complied with as a self speaking order was passed after properly confronting the registered person however, the registered person did not comply with the directions of the learned CIR(A) as he did not produced record to the deptt within 15 days of the receipt of the order of the learned CIR(A).

17. The representative of the Agency has pointed out that M/s Anmol Autos, Tanda Road Jalalpur Jattan, Gujrat is engaged in the business of purchase and sale of Honda Motor Cycles on retail basis. Sales Tax Return for the tax period June 2013 was e-filed declaring taxable supplies at Rs.8,919,805/- on which the Sales Tax was paid @ 16% at Rs.1,427,169/- whereas the Sales Tax rate was enhanced by Federal Govt from 16% to 17% w.e.f. 13.6.2013. As per return filed for the period it revealed that the registered person made sales of Rs.8,919,805/- as 30.6.2013 and charged Sales Tax @ 16% at Rs.1,427,169/- instead of sales tax @ 17% which comes to Rs.1,516,367/-. In this way the registered person made short payment of Rs.89,198/- Consequently a show cause notice u/s 11(2) was issued and Sales Tax @ 17% on the declared sales was charged at Rs.89,198/- along with penalty at Rs.10,000/- u/s 33(5) of the Sales Tax Act 1990 for contravention of section 3(1) ibid vide order No.90-ST/2013-14 dated 7.4.2014. The registered person being aggrieved with the above treatment filed appeal before the learned CIR(Appeals) Sialkot and contended that sale tax rate from 1.6.2013 to 12.6.2013 was to be applied @ 16% whereas, the deptt has applied rate of 17% for whole of the month. The learned CIR(Appeals) while disposing of the case remanded it back to the assessing officer with the directions to re-examine the case and re-assess the sales tax liability according to the exact supply dates. Simultaneously the registered person was also directed to produce the complete record to the deptt within 15 days of the receipt of letter from the other. In compliance with the directions

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issued by the learned CIR(Appeals)Sialkot a show cause notice u/s 11(2)&(3) of the Sales Tax Act 1990 was issued on 29.8.2016 which was properly served upon the registered person on 3.9.2016. But despite proper service no reply was received from the registered person. Reminder to show cause notice on 3.11.2016 which was properly served upon the registered person on 4.11.2016. In reply thereto Mr. Jehangeer Yousaf Meer filed written reply on behalf of the registered person on 11.11.2016 without any supporting documents such as sales invoices, purchase invoices, proof of payments and purchase register.

18. The representative of the Agency has apprised that the reply furnished by the taxpayer was considered sketchy, elusive merely an attempt to distort true facts and was not substantiated with material evidence and therefore was rejected on the basis of following reasons:-

- a. that as per sales tax return e-filed for the tax period 06/2013 the taxpayer has made purchases on 12.6.2013 at Rs.1,798,290/- & from 19.6.2013 to 27.6.2013 at Rs.3,276,976/-. It has been claimed by the taxpayer that sales were made from 1.6.2013 to 12.6.2013 and in this regard the taxpayer has filed fabricated supply register which is neither on prescribed format nor supported by the data declared of the return filed by the registered person himself. It is imperative to mention that the taxpayer purchases motorcycles from M/s Atlas Honda Ltd Lahore and it is not physically possible that motorcycles purchased on 12.6.2013 received from Lahore to Jalalpur Jattan on the same date were sold out on the same date as well. It is crystal clear that the both the purchases of Rs.1,798,290/- made on 12.6.2013 and subsequent purchases made from 19.6.2013 to 27.6.2013 could not be sold from 1.6.2013 to 12.6.2013 in the case of former or afterwards in the case of later. Furthermore, the taxpayer has declared in his sales tax return that whole purchases made during the period 12.6.2013 to 27.6.2013 were sold out during the month of June 2013 and no closing stock was available with taxpayer detail of purchases declared by the registered person as per sales tax return, given as under:-

Date of Purchase	Amount
12.6.2013	1,798,290
19.6.2013	755,698
21.6.2013	555,862
26.6.2013	444,690
27.6.2013	1,520,724
Purchases made during Dec 2012 to May 13 claimed during the month of June 2013 in order to claim input tax	2,351,239
<b>Total</b>	<b>7,426,503</b>

19. The representative of the Agency has pleaded that it is abundantly clear that the purchases were either made on 12.6.2013 or afterwards before their subsequent sales on 30.6.2013 as per declared version of the registered person. Similarly even in respect of the purchases made from Dec 2012 to May 2013 declared by the registered person in June 2013 no sale invoices have been provided from where it could be verified that the sales were made from 1.6.2013 to 12.6.2013. As discussed by the learned CIR(A). The burden of proof squarely lied in the registered person but he miserably failed to produce documentary evidence whatsoever.

20. The representative of the Agency has contended that the registered person has shown sales of Rs.8,919,805/- from 1.6.2013 to 12.6.2013 whereas purchases of Rs.1,798,290/- were made on 12.6.2013 and from 19.6.2013 to 27.6.2013 at Rs.3,276,976/- which could not be sold from 1.6.2013 to 12.6.2013 in the case of former or afterwards in the case of later. The registered person failed to substantiate his contention that he made total

supplies of Rs.8,919,805/- on or before 12.6.2013 that in any case is not possible because of the reason that the purchases were either made on 12.6.2013 or on subsequent dates as mentioned at sub para (b) above.

(b) that the taxpayer has failed to produce sales tax invoices as promised by him before the learned CIR(Appeals) despite repeated requests, therefore the claim of the taxpayer that he made the supplies before 12.6.2013 appears to be an after thought and concocted story just to avoid proper incidence of taxation.

(c) It is astonishing to note that the opening balance has been declared at Rs.165,229,554/- and closing balance has been declared at Rs.172,656,057/- with no supplies of stocks consumed during the month, which do not commensurate with the data declared in the sales tax return. From the aforementioned discussion and facts of the case it is abundantly clear and beyond any shadow of doubt that the taxpayer's contention is absolutely incorrect, absurd and against the law in as much as he has contravened the provisions of section 3,6,22 & 26 of the Sales Tax Act, 1990. Therefore sales tax of Rs.89,198/- was charged u/s 11(2) & (3) of the Sales Tax Act, 1990 along with default surcharge of Rs.32,334/- u/s 34 and penalty of Rs.10,000/- under 33(5) of the Sales Tax Act, 1990. The Sales Tax principal demand was not enhanced in this case as compared to demand created in original assessment order however, after levy of default surcharge u/s 34 demand was enhanced. Re-assessment was completed strictly in accordance with law and also keeping in view the directions of the learned CIR(A). However the registered person did not produce sales tax invoices, purchase invoices, proof of payments, bank statement regarding proof payments received against sales made as directed by the worthy CIR(A). Re-assessment in this case was completed by the competent officer strictly in accordance with law.

21. The representative of the Agency has mentioned that compliance of FTO order has been made. Re-assessment has been completed strictly in accordance with law. The re-assessment order is appeal-able order and if the registered person has some grievance he may file appeal before the learned CIR(A). When adequate remedy is available and the matter is also relating to assessment of sales tax liability the registered person is not entitled to file representation u/s 32 of the FTO Ordinance 2001. No stay order was issued regarding re-assessment proceedings by the FTO and re-assessment in this case was completed in accordance with law as well as in pursuance of the directions of the FTO during implementation proceedings.

22. The representative of the Agency has underscored that for passing re-assessment as directed by the worthy CIR(A) first show cause notice was issued u/s 11(2) of the Sales Tax Act, 1990 bearing No.69 dated 29.8.2016 which was properly served upon the taxpayer through TCS vide receipt No.14004000201 dated 1.9.2016 and one copy of the notice was also served upon the taxpayer through notices server. In compliance there to Mr. Jehangeer Yousaf filed reply that under SRO No.946(1)/2013 issued on 25.10.2013 Sales Tax was to be charged @ 16% up to 29.6.2013. As per Sales Tax return the registered person declared that sales have been made on 30.6.2013 along with reply the registered person did produced sales tax invoices and bank statement to establish his stance that sales were made prior to 30.6.2013. Again reminder to notice u/s 11(2) was issued on 3.11.2016 which was properly served upon the registered person. In compliance thereto the taxpayer filed written reply without any supporting documents such as sales invoices, bank statement and this reply was duly considered and discussed in the body or order passed u/s 11(2)&(3) of the Sales Tax Act 1990 dated 25.11.2016. To provide full opportunity of being heard again a reminder to notice u/s 11(2)&(3) of the Sales Tax Act 1990 was issued on 14.11.2016 through which the registered person was again requested to produce complete supply record i.e. supply invoices from 13.6.2013 to 30.6.2013. This notice was properly served upon the registered person on 16.11.2016 but in compliance there to nobody attended the office on the due date i.e. 16.11.2016. A reminder was again issued on 17.11.2016 for compliance by 25.11.2016 this notice was properly served upon the taxpayer on 21.11.2016 but on the due date no compliance was made. Consequently order u/s 11(2)&(3) of the Sales Tax Act 1990 was passed on 25.11.2016 strictly in accordance

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with law and also complying with the directions of the learned CIR(A). From the above it is evident that sufficient opportunities of being heard were afforded to the registered person but he failed to produce sales invoices and bank statement. The case laws quoted by the registered person are not identical to this case.

23. The representative of the Agency has requested that the representation filed by Mr. Jehangir Yousaf Meer u/s 32 of the FTO Ordinance 2001 is illegal hit by time limitations and also has no substance. It is therefore requested that the representation filed by Mr. Jehangir Yousaf Meer an unauthorized person may be rejected being devoid of any merits. The representative of the Agency has further prayed that the particular issue is concerning with the assessment and reassessment of tax, thus impugned findings of learned FTO dated 10.6.2016 may be set aside.

**Analysis/Conclusion**

24. After perusal of record and examination of all documents and detailed hearing it has been observed that Commissioner IR, Sialkot has passed orders on 25.11.2014 indicating that the sales tax at the rate of 17% was levied under Section 3(1) of the Sales Tax Act 1990 on the taxable supplies of Rs.8,919,805/- whereas the registered person had paid sales at @ 16% instead of 17% on taxable supplies made during the period from 13.6.2013 to 30.6.2013 and registered person has made short payment of sales tax amounting to Rs.89,198/-. It is further indicated that from 1.6.2013 to 12.6.2013 and from 21.6.2013 to 29.6.2013 applicable rate of sales tax was 16% whereas from 13.6.2013 to 20.6.2013 and on 30.6.2013 applicable rate of sales tax was 17% whereas the officer has applied rate of 17% on transactions of whole tax period of June 2013 and the taxpayer can prove this through invoices and proof of payments. Therefore the impugned order was thus remanded back with the directions that the deptt may re-examine the case and re-assess the sales tax liability according to the exact supply dates and the appellant is also instructed to produce the complete supply record to the deptt within 15 days of receipt of request letter of the officer if the contention of the taxpayer gets proved the demand will stand deleted accordingly otherwise the demand will stand upheld.

25. Despite hectic effort by the deptt and issuance of notices to the complainant on 29.8.2016, 3.11.2016, 14.11.2016, 17.11.2016, 29.6.2016, 25.7.2016, 10.8.2016, 12.8.2016 and 21.10.2016 no practical action(s) has been taken by the complainant which shows mala fide intend on the part of complainant. In addition Commissioner IR (Zone-II) RTO Sialkot has communicated to DCIR Unit 06, Sialkot on 11.8.2016 indicating that the copies of the Order-in-Appeals passed by the Commissioner IR (Appeals), Sialkot in the following cases for necessary action in the light of directions given by the CIR(A) in the operative para of the orders:-

S. No	Name of taxpayer	O.N.O.No.& Date	O.N.A. No. & Date	Remarks
1.	M/s Anmol Autos, Jalalpur Jattan, Gujrat.	90-ST/2013-14 7.4.2014	29-ST/2014 25.11.2014	CIR(A) has remanded back the order with the directions to re-examine the case and re-assess the sales tax liability according to exact supply dates. If contention of the taxpayer gets proved, the amount will stand deleted otherwise the amount will stand upheld.

26. Thus, the concerned officer was directed to take complete action in the light of directions given in operative para of the order and submit progress report in the matter by 29.8.2016 positively.

27. The sorry state of affair is that the particular case falls within the purview of Section 9(2)(a) as well as 9(2)(b) of the FTO Ordinance 2000, which could not be observed by the relevant authorities of the office of FTO. On the other hand, the learned FTO has not considered the above mentioned facts while passing the aforementioned findings which are not sustainable/maintainable in the eyes of law. The learned FTO has observed that it is clear from the evidence produced that the first assessment was framed on 7.4.2014 by the Inland Officer, Enforcement Unit 06, Zone-II RTO, Sialkot while the appellate order by the CIR(A) Sialkot was passed on 25.11.2014 through which the case was remanded back for denovo assessment but surprisingly no re-assessment order was made in the case while on the basis of his original assessment order of 7.4.2014 the Inland Revenue Officer acting in clear violation of law and procedure attached the bank account of the taxpayer on 28.1.2016 and recovered the amount of Rs.89,198/- when no assessment order was in field. This recovery in absence of any assessment order in field is clear violation of Section 48 of the Act. On the contrary the view point of the Agency is that the first assessment which was framed on 7.4.2014 was in the field and the Agency after due process of law has attached the bank account of the complainant and made recovery. Date of dispatch by the Commissioner IR (Zone-II) RTO Sialkot to DCIR Unit 06, Sialkot was on 11.8.2016 which shows that the order for re-assessment duly issued by 11.8.2016 was not in the knowledge of the relevant officers of the Agency.

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 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.

29. Section 9(2)(a) of the FTO Ordinance 2000 provides that FTO shall not have jurisdiction to investigate or inquire into matters which are subjudice before a court of competent jurisdiction or tribunal or board of authority on the date of the receipt of a complaint, reference or motion by him.

30. 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.

31. It is pertinent to mention that the recommendations of the FTO are in excess of his jurisdiction. Undoubtedly no adverse remarks can be recorded in PER of Officers i.e. Chief Commissioner, Commissioner and IRAO without following the legal course of action and without giving them an opportunity of hearing. Only the competent authority can initiate proceedings against officers and adverse action can be taken after following a proper legal procedure. As per law, FTO has limited scope to identify maladministration and debarred from



interpreting the law as it is function of the courts. Thus FTO has no jurisdiction to intervene in the matters where remedy by filing an appeal as a matter of right is available. Thus FTO has no power to interfere in the service matter and has no authority that any adverse observations be recorded in the PERs of various officers of rank and file or initiation of unnecessary disciplinary proceedings just under the garb of maladministration.

32. 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. Under Section 32 of FTO Ordinance 2000 the President may pass such order on a representation as he may deem fit. Consequently, the Agency's representation is liable to be accepted and the impugned recommendations are required to be set aside. However, the complainant can seek remedy available to him from the relevant forums/competent court of the relevant law.

33. Accordingly, the President has been pleased to (a) reject the representation of the Complainant (b) accept the representation of the Agency and (c) set aside the impugned recommendations/findings of learned FTO.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

M/s Jehangir Yousaf Meer,  
R/o Amin House 1st Floor, Al-Karam Street,  
Shah Jehangir Road, Gujrat City.

No.20/FTO/2017 dated 15.03.2017

Copy for information to:

- ✓ 1. The Chairman, Federal Board of Revenue, Islamabad.
2. Sheikh Ghulam Asghar, Advocate, Railway Road, Block No. 5, Dera Ghazi Khan.
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 Affairs)