

FBR, Versus M/s Global Cotton Industries, Rajanpur

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD
AGAINST FINDINGS / RECOMMENDATIONS DATED 23.11.2016 PASSED BY THE FTO IN
COMPLAINT NO. FTO-MLN/0000748/2016**

I am directed to refer to your representation No. 4(0748)/TO-I/2016 dated 23.12.2016 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 23.12.2016 has been filed by the Agency/FBR against the findings of the FTO dated 23.11.2016, whereby it has been held that:

"FBR to-

- (i) **Direct the Commissioner IR to dispose of refund claim within 21 days; and**
(ii) **Report compliance within 07 days thereafter."**

3. The brief facts of the case are that this complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against non issuance of refund amounting to Rs.4.531 million for Tax Years 2014 and 2015.

4. After e-filing of refund applications for these tax years, the Complainant's Authorized Representative (AR) visited the Deptt on 13.06.2016, 05.07.2016, 03.08.2016, 05.08.2016, 11.08.2016 and 18.08.2016 for settlement of the claim, but the same was not settled within sixty days of the receipt of application.

5. The complaint was sent for comments to Secretary Revenue Division in terms of Section 10(4) of the FTC Ordinance. In response, the Chief Commissioner IR vide letter No. CCIR/RTO-MN/3620 dated 22.09.2016 forwarded comments of Commissioner IR, Multan Zone bearing No.2401 dated 21.09.2016. The Deptt contended that under Rule 3(2)(ii) of the Federal Tax Ombudsman Investigation & Disposal of Complaints Regulation, 2001 when no representation to the Revenue Division is made before filing of complaint, the same is to be rejected at preliminary stage and as no representation was made in this case, the complaint is not maintainable. Moreover, original evidence in support of tax deduction on cash withdrawals under Section 231A of the Ordinance and electricity bills was also not provided; therefore, the claim could not be settled in time. Further contended that limitation of 60 days for deciding refund application would start from the date of providing supportive documents, which have not been filed as yet. According to the Deptt, no compensation was due in the case in the light of decision of Honorable High Court in tax reference No.48 of 2011 (CIR Vs Chicago Metal Works).

6. On the contrary, the Authorized Representative (AR) contended that refund applications for both the years along-with the relevant evidence/documents had been filed and so there was no justification for non-issuance of refund.

7. The Departmental Representative (DR) reiterated the Deptt's stance taken in the written reply and also stated that onus to establish the refund lies on the Complainant, but could not justify as to why the discrepancies, if any, were not confronted to the Complainant immediately on receipt of refund claim. However, during the hearing on 18.10.2016, the DR informed that evidence has now been provided and the process of verification has been initiated. The claim would be settled expeditiously.

28 MAR 2017

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FBR eDOX Dy. No. 40250-R
received in Ch. Sectt.
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31-03-17

(b)

8 Both the parties heard and record examined by FTO. Thus FTO has issued aforementioned findings.

9. The Agency has taken ground that the Honorable FTO has decided that tiling of representation before the departmental authorities prior to tiling of complaint before the honorable FTO is not mandatory. It is very submitted that if this interpretation of the honorable FTO is accepted, the same shall practically reduce Regulation No.3(2)(ii) of the Federal Tax Ombudsman Investigation & Disposal of Complaints Regulations, 2001 practically void and redundant. The same is reproduced below for facility of reference:

Presentation of complaints.... (1)...

(2) it will be stated in the solemn affirmation that;

(i).....

(ii) a representation to the Senior Officer of the Revenue Division, its Department or Agency in respect of the allegations contained in the complaint was made, but either no reply thereto was given within a reasonable time or representation had unjustly been turned down.

It is very humbly submitted that Finding to the extent "Filing of representation before filing of complaint is thus not mandatory" as mentioned in para 6 of the order may be expunged.

10. The Agency has argued that the Judgment of the honorable Lahore High Court in re: Commissioner inland Revenue v Chicago Metal Woks [2015 PTD 1913] was cited by the Agency before the honorable FTO to canvass that in the absence of any refund order by the Commissioner a negative order is presumed to have been passed and the aggrieved party is required to file appeal by resorting to Section 170(5)(b) of the Income Tax Ordinance, 2001. The Honorable FTO has rejected the plea in paragraph No.7 of the impugned Findings/Recommendations by erroneously placing reliance upon a non-existent judgment of the Honourable Lahore High Court cited by him as 2015 PTD 6191 to observe that the judgment Commissioner inland Revenue v Chicago Metal Woks [2015 PTD 1913] has been reversed by the Honourable Lahore High Court. Since no such judgment exists, it is submitted that findings in paragraph No.7 of the impugned Findings/Recommendations may be expunged.

11. The Agency has pleaded that on the Strength of the Honourable Lahore High Court's judgment in re: Commissioner Inland Revenue v Chicago Metal Woks [2015 PTD 1913] the non-issuance of a refund order becomes an appealable matter against which the complainant has a right to tile appeal before the learned Commissioner Inland Revenue Appeals. It is pointed out that the Honourable FTO's jurisdiction is circumscribed and does not extend to appealable matters which fall in the exclusive jurisdiction of the learned appellate hierarchy. The entire order i.e Findings/Recommendations thus merit to be quashed on this sole ground.

12. The Agency has contended that on the strength of the Honourable Lahore High Court judgment in re; Commissioner Inland Revenue v Chicago Metal Woks [2015 PTD 1913] the Recommendation of the. Honourable FTO directing the Commissioner Inland Revenue to dispose of refund claim within 21 days is beyond the Honourable FT O's jurisdiction and may be expunged especially because "investigation" as envisaged by proviso to sub-section (1) of Section 171 is not yet complete and the claim can neither be accepted nor rejected at this preliminary stage.

13. The Agency has prayed that the findings as well as recommendations of the Honorable Federal Tax Ombudsman in Complaint No. FTOIMLN1000074812016 may be decided on merits.

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14. On the other hand, the Complainant has filed comments against the instant representation of FBR on 16.01.2017 through Sh. Ghulam Asghar, Advocate and supported the impugned recommendations findings of learned FTO with request that the representation of FBR may be rejected.

15. After perusal of record and examination of all documents it has been established that in terms of Section 9(2)(b) of the FTO Ordinance 2000, the FTO has no jurisdiction to investigate or inquire into the matters which relate to the assessment of income, determination of liability of tax, interpretation of law, rules and regulations relating to the said assessment/ determination in respect of which legal remedies of an appeal, review or revision are available under the relevant legislation.

16. The Hon'ble FTO has inter alia observed in the impugned findings/recommendations that during the hearing, the DR informed that evidence has now been provided and the process of verification has been initiated. The claim would be settled expeditiously.

17. It is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the Commissioner IR to dispose of refund claim within 21 days. It is just a harmless order and only the Agency has to decide and dispose of the issue as per law which was never denied in its written reply even by the Agency. The Agency has 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 are quite sustainable and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the impugned recommendations are sustainable and unexceptional.

18. Accordingly, the President has been pleased to reject the instant representation of the FBR-Agency and the findings/recommendations of the FTO are upheld.


(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

✓ The Chairman,
Federal Board of Revenue,
Islamabad

No.10/FTO/2017 dated 16.03.2017

Copy for information to:

1. M/s Global Cotton Industries, D.G. Khan Rajanpur Road, Rajanpur.
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)

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