

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

Un-Favourable

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FBR, Versus Mrs. Sadia Naseem, Lahore

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD
AGAINST FINDINGS / RECOMMENDATIONS DATED 02.02.2017 PASSED BY THE FTO IN
COMPLAINT NO. FTO-LHR/0000937/2016**

I am directed to refer to your representation No. 4(937)TO-I/2016 dated 07.03.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 07.03.2017 has been filed by the Agency/FBR against the revised findings of the FTO dated 02.02.2017, whereby it has been held that:

"FBR to:-

i. Direct to Commissioner IR to issue refund compensation due, in accordance with law;

ii. Report compliance within 45 days.

3. The brief facts of the case are that the complaint has been filed under section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against non issuance of income tax refunds for the tax years 2010 to 2016, aggregating to Rs. 25,529,583/-.

4. The complainant, an Individual, assessed with Corporate RTO, Zone-II, Lahore, manufactures plastic sheets utilizing imported raw material. The refunds arise on account of excess deduction of income tax at source U/S 148 (on imports), 231A (on electricity and telephone bills). The tax returns and refund applications were uploaded to IRIS as under:

Tax Year	Income Tax return e-filed on	Refund Application e-field U/S 170 on	Refund claimed
2010	20.10.2010	02.12.2015	Rs. 597,776
2011	12.11.2011	02.12.2015	Rs. 1,671,533
2012	03.10.2012	03.12.2015	Rs. 2,518,216
2013	02.11.2013	02.12.2015	Rs. 4,988,872
2014	23.11.2015	24.11.2015	Rs. 4,653,935
2015	23.11.2015	24.11.2015	Rs. 5,848,904
2016	02.12.2016	02.12.2015	Rs. 5,230,977
Total			Rs. 25,529,583

The Complainant/taxpayer contends that no order U/S 170(4) of the Income Tax Ordinance, 2001 (the Ordinance) was passed by the competent Dept'l authority within the prescribed time for any of the tax years cited above, nor was any notice issued by the Department to requisition information/documents in respect of the refunds claimed for these years. All required supportive documents were statedly furnished to the Department but they elicited no response. A written reminder was also sent on 02.12.2016 for issuance of refund but again there was no response from the Department which tantamount to maladministration under the FTO Ordinance, 2000.

5. When confronted, under Section 10(4) of the FTO Ordinance, Dept filed reply dated 10.01.2017, in which it was clarified that the Complainant/taxpayer had the status of an Individual for tax purposes in all the tax years in question but later she converted her business into a corporate entity which was duly registered with the SECP in October, 2016. The relevant assessment record was statedly received by Corporate RTO, Zone-II, Lahore on 04.01.2016 on transfer of jurisdiction over the case and that in the absence of proof of tax deductions and allied documents in support of the refund claims they could not be processed/disposed of by the Dept. the unit officer had issued a letter to the taxpayer to provide the required evidence and on its receipt undertook to finalize the pending claims.

6. Both sides heard and available record perused by FTO. Thus FTO has issued aforementioned findings.

7. The instant Representation has been filed by FBR. The Agency has taken ground that the Agency has pointed out that the decision of Honourable Federal Tax Ombudsman dated 02.02.2017 has been examined and observed. The complainant was under legal obligation to provide evidence of tax while filing the Income Tax Ordinance, 2001 further read with rule 73(2)(a) of the income Tax Rule, 2002. However, the taxpayer company despite repeated requests by the Unit Officer, failed to provide the evidence of the tax collected under Section 231A, 153 and 235 of the Income Tax Ordinance, 2001. It is stated that the tax collection under Section 148 of the Income Tax Ordinance, 2001 is adjustable in terms 148(7) of the Income Tax Ordinance, 2001 further read with Section 29(C) of the Income Tax Ordinance, 2001 which can only be ascertain from the documents which were not provided till the decision of Honourable FTO and the same was submitted to the Honourable FTO as under:-

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SS (TO-I & II) - Jee
P. discuss 6.6.17

SS (TO-I)

FBR Doc No. 71604K
Accession No. (Legal) Office
on 06-06-17

"The complainant has not provided proof of tax deduction and other allied documents; therefore, admissibility of her claim cannot be determined at this stage. the concerned Audit officer issued letter for provision of evidence of tax deduction however, on the due date the taxpayer company has requested for adjournment for submission of documents till 25.01.2017. it is therefore, requested that the Honourable FTO may be requested to compel taxpayer company to associate with the department for processing of her claim and the complaint may be rejected being devoid of merits and premature."

8. The Agency has argued that it is duty of complainant to file complete return in terms of Section 114 of the Income Tax Ordinance, 2001 read with Section 120(1) along with the evidence in the light of section 164 sub section (2) of the Income Tax Ordinance, 2001 which reads that a person required to furnish a return of taxable income for a tax year shall attach to the return (copies of the challan of payment on the basis of which a certificate is provided to the person under this section in respect of tax collected or deducted in that year.

9. The Agency has mentioned that since the taxpayer company has failed to discharge its liability by providing the proof of tax deduction on the basis of varsity and admissibility of the claim which is yet to be established and refunding amount from national exchequer cannot be allowed before the completion of verification and admissibility of the claim. Further the Honourable President of Islamic Republic of Pakistan's decision in the latest judgment in the case Federal Board of Revenue Vs. M/s Qureshi Packages (Pvt) Limited, Lahore in complain No. FTO-MLN/40783/2016 held as under:

10. The Agency contended that after perusal of record and examination of all documents, it is pointed out 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 to any action or inaction of 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 grab of maladministration. As regards the issue of compensation it is submitted that the compensation/additional payment becomes due to the taxpayer U/S 171 where as refund due to the tax payer is not paid within three months of the date on which it becomes due. As per Section 171(2)(c) of the Income Tax Ordinance, 2001 a refund becomes due on the orders of Honourable President of Pakistan.

- i. Representation u/s 32 of the FTO Ordinance, in complaint No. 694/LHR/IT(582)/1225/2010 M/s Royal Construction Company (Pvt) Ltd. Vs FBR.
- ii. Representation U/S 32 of the FTO Ordinance, in complaint No. 40/2009 M/s Rana Tariq Carriage Co Faisalabad Vs FBR.

15. In both the cases it was held by the office of Honourable President that section 171(2)(c) of the Income tax Ordinance, 2001 states in unambiguous terms that a refund is created as having become due on the date the refund order is made. Moreover, "explanation" inserted vide Finance Act, 2013 in Section 171 expressly clarifies the matter as under:

"That where a refund order is made on an application under sub Section (1) of Section 170 for the purpose of compensation, the refund becomes due from the date the refund order is made and not from the date the assessment of income treated to have been made by the commissioner U/S 120."

In the instant case, no maladministration is involved on the part of the department and no order of refund has so far been made so issue of compensation does no arise as per pronouncement of law.

11. The Agency has requested that keeping in view the above facts and legal position, it is evident that no maladministration has occurred and recommendations of Honourable FTO to FBR to direct the Chief Commissioner to issue refund/compensation due, as per law are against the judgment of Lahore High Court Lahore and decision of officer of the Honourable President of Pakistan as discussed supra. It is therefore, prayed that order of Honourable FTO dated 02.02.2017 may kindly be vacated.

12. On the other hand, the Complainant has filed comments against the instant representation of Agency on 31.03.2017 through Syed Azeem Haider, Finance Manager, Mohid Industries and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.

13. After perusal of record and examination of all documents, it has been noted 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.

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It is as clear as the crystal that FTO has made recommendations which are only to the extent to direct to Commissioner IR to issue refund compensation due, in accordance with law within 45 days. It is just a harmless order and only the Agency has to decide 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 recommendations are sustainable and unexceptional in the eyes of law.

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

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.68/FTO/2017 dated 31.05.2017

Copy for information to:

1. Mrs. Sadia Naseem, Prop: Mohid Industries, Plot No. 158, Sundar Industrial Estate, Raiwind Road, Lahore.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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