

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

2:5

Federal Board of Revenue
Versus
M/s Nasuha Model Cotton Industris, D.G.Khan

SUB: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD AGAINST FINDINGS/RECOMMENDATIONS DATED 03.01.2017 PASSED BY THE FTO IN COMPLAINT NO. FTO-MLN/0000785/2016

I am directed to refer to your representation No. 4(0785)/TO-I/2016 dated 03.02.2017 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 03.02.2017 has been filed by the Agency/FBR against the revised findings of the FTO dated 03.01.2017, whereby it has been held that:

“The FBR:-

- i. Direct the Commissioner IR to issue refund/compensation due, within 15 days; and
- ii. Report compliance within 07 days thereafter.”

3. The brief facts of the case are that these complaints have been filed separately for each year against non issuance of refund amounting to Rs. 0.346 million, Rs. 0.351 million, Rs. 1.224 million and Rs. 0.436 million with compensation for Tax Years 2008, 2010, 2011 and 2012.

4. Brief facts of the case are that refund applications for tax years 2008 and 2010 to 2012 were filed on 28.04.2012 and on 26.06.2013 respectively, followed by reminder dated 03.08.2013. Then after visits of the Deptt time and again, final reminder was sent on 21.09.2016, but the claims were not settled.

5. The complaints were sent for comments to Secretary Revenue Division in terms of Section 10(4) of the FTO Ordinance. In response, the Chief Commissioner IR, RTO, Multan vide letter dated 21.11.2016 forwarded comments of the Commissioner IR, Multan Zone stating that complete documents were not filed along with refund applications, so the claims could not be processed. According to the Deptt, limitation for passing order Under Section 170(4) starts after the submission of documents by the Complainant and not on receipt of refund application.

6. The DR reiterated the comments of the Deptt, but could not justify as to why the deficiencies, if any, were not communicated to the Complainant immediately on receipt of refund application. On the other hand, the AR stated that evidence was provided along with refund applications and also during the complaint proceedings, but the process of verification has not initiated as yet.

7. The DR and the concerned officer attended the proceedings on 01.12.2016 and stated that verification process has now been completed and refund due would be issued soon. Thus FTO has issued aforementioned findings.

8. The instant Representation has been filed by FBR. The Agency has taken ground that the complainant has not filed representation before the departmental authorities prior to filing of complaint before the honorable FTO which was mandatory and makes 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:

3. 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.

9. The Agency has contended that the complainant filed return of income for the tax year 2008 on 31.10.2008 and refund application was filed on 27.06.2013 which was not within stipulated time as envisaged under the provision of Sub Section 2(c) of Section 170 of the Income Tax Ordinance 2001. The basic principle of

79

interpretation of taxing statutes is stated in Cape Brandy Syndicate Vs Inland Revenue Commissioner [1921] 1KB 64, and reaffirmed by Pakistan's superior judiciary many times, is this: "In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used" among others, Government of Pakistan and others V. Hashvani Hotels Ltd PLD 1990 SC 68 and A&B Food Industries Ltd v. Commissioner of Income Tax 1992 SCMR663). However the FTO has not agreed with the departmental contention that the application seeking refund to Tax years 2008 was time barred. It is submitted that instead of following the text of Section 170 regarding time limitation regarding filing the application as specified in section 170(2) of the income tax ordinance, 2001 he has tried to interpret the law which does not fall within the jurisdiction of the FTO U/S 9(2b) of the FTO ordinance, 2000. There is multitude of judgments by the President of Pakistan on this issue that the FTO does not possess the jurisdiction to interpret law.

10. The Agency has pleaded that even otherwise late filing of refund application has been held by the Superior judiciary to disentitle the taxpayer to claim refund. It has been so held in the judgment of the Supreme Court of Pakistan in **Re: Shahtaj Sugar Mills Ltd through Chief Executive Vs. Additional Secretary, Govt. of Pakistan, Ministry of Finance, Karachi & Others [2009PTD 1544 (S.C. Pak)]**.

11. The Agency has pointed out that the Lahore High Court in its judgment in Lyallpur Chemicals Ltd through chief executive Vs. Federation of Pakistan through Secretary Revenue Division & 4 Others in a similar matter categorically held that filing of refund claim beyond the statutory period of 2 months was rightly rejected. The Supreme Court of Pakistan in another judgment reported as **Commissioner of Sales Tax, Zone-A, Lahore Vs. Chenab Textile Mills Ltd, Lahore [42 Tax 150 (S.C. Pak)]** has held that each and every day's delay must be explained before it can be condoned. This has not been done in this case.

12. The Agency has expressed that the judgment of the Honourable Lahore High Court in re: Commissioner Inland Revenue v Chicago Metal Woks [2015 PTD 1913] was cited by the Agency before the Honourable 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. Reliance was also placed on judgment of Honourable Lahore High Court in re: Commissioner Inland revenue v Chicago Metal Works [2015 PTD 1913] in the context.

13. The Agency has stated 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 15 days is beyond the Honourable FTO'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.

14. The Agency has prayed that the findings as well as recommendations of the Honorable Federal Tax Ombudsman in Complaint No. FTO/MLN/0000785/2016 may be set aside.

15. On the other hand, the Complainant has filed comments against the instant representation of Agency on 22.02.2017 through Imran Jamil & Company and supported the impugned recommendations/findings of learned FTO with request that the representation of Agency may be rejected.

16. After perusal of record and examination of all documents, it has been observed that recommendation (ii) of the learned FTO in the instance case indicates compliance report within 07 days. FTO used to give 7/15/21 days for compliance of his orders to FBR/ Agency. On the contrary, thirty (30) days are allowed as per FTO Ordinance, 2000 to file an appeal before the appellate forum by an aggrieved party. Moreover, Section 14(2) of the Federal Ombudsmen Institution Reforms Act, 2013 (XIV of 2013), provides that in case a representation is made, operation of the impugned findings/recommendations shall remain suspended for a period of 60 days. Thus, FTO has practically made the right of making representation against the recommendations before the appellate forum as infructuous. Even powers of the appellant forum have been confined by giving unreasonable timeframe for implementation of the findings in hasty manners. It would be more appropriate while specifying timeframe for compliance report, logical sequence should be observed by the Office of learned FTO.

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 issue refund/compensation due, within 15 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

on 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.

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

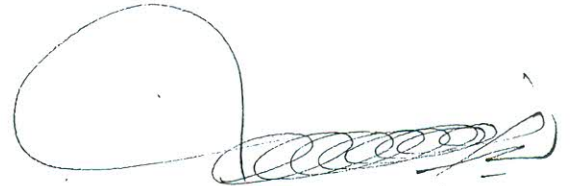
(Zulfiqar Hussain Awan)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.57/FTO/2017 dated 02.05.2017

Copy for information to:

1. M/s Nasuha Model Cotton Industries, Dera Ismail Khan Road, Taunsa Sharif, **D.G. Khan.**
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)