

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

FBR, Versus Raja Muhammad Ibrahim

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD
AGAINST FINDINGS / RECOMMENDATIONS DATED 23.02.2017 PASSED BY THE FTO IN
COMPLAINT NO. FTO-HQR/0000662/2016**

I am directed to refer to your representation No. 4(662)S(TO-I)/2016 dated 21.03.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 22.03.2017 has been filed by the Agency/FBR against the revised findings of the FTO dated 23.02.2017, whereby it has been held that:

"FBR to direct:-

- i. **Direct the CIR to review the time barred order for the tax year 2010 passed arbitrarily; and**
- ii. **Report compliance within 45 days."**

3. The brief facts of the case are that this is a complaint filed U/S 10(1) of the FTO Ordinance against finalization of ex-parte assessment proceedings U/S 122(1) read with Section 122(5) of the Income Tax Ordinance, 2001(the Ordinance), by the RTO, Rawalpindi.

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 comments vide letter dated 21.10.2016.

5. According to the AR the Complainant filed Income Tax Return for the Tax Year 2010, which was deemed to be an assessment order. Subsequently, the Deptt initiated amendment proceedings. A show cause notice dated 04.06.2016 was issued to compliance on 11.06.2016. The Complainant filed written reply on 20.06.2016 along with Wealth Reconciliation Statement which revealed significant accretion in wealth. The AR contended that the investment/increase was probed earlier, accepted by the then DCIR, and no adverse inference was drawn, as per order sheet entry dated 05.03.2012. The Assessing Officer rejecting the clarification finalized the proceedings by passing order U/S 122(1) read with 122(5) of the Ordinance creating considerable tax demand.

6. The AR contended that the order was unlawful and arbitrary on two scores: (i) the Deptt had earlier accepted the explanation about sources of investment. No adverse inference was drawn and proceedings were filed vide order sheet entry dated 05.03.2012; (ii) the Deptt was not empowered to pass order u/s 122(1) of the Ordinance as this assessment had become time barred on 30.06.2016, as per provisions of section 121(3) of the Ordinance and assessment order was not served on the Complainant by 30.06.2016. The AR further pleaded that both the show cause notice and the assessment order do not bear the bar code which was an essential requirement in the light of instructions issued by FBR. He averred that order U/S 121 of the Ordinance having become time barred, no proceedings could be initiated for tax year 2010. The AR prayed that the Deptt be directed to cancel the impugned assessment, dated 30.06.2016.

7. Reiterating the written comments dated 21.10.2016 filed by the Chief Commissioner RTO, Rawalpindi, the DR claimed that the complainant's statement of finalization of proceedings vide order of sheet dated 05.03.2012 was not tenable. The assessment record did not contain any such order sheet. The DR contested the complainant's argument that in respect of NIL/NO income cases, proceedings are filed on order sheet. It was argued that order sheet is a confidential document and an integral part of the record, copies of which are only provided on special request/payment. It was further stated that it was not established that the order sheet produced by the taxpayer pertained to his assessment record. The DR contended that notice to amend the assessment was lawfully issued and properly served. As the taxpayer failed to establish the source of investment, the deemed assessment was amended u/s 122(1) read with section 122(5) of the Ordinance. The DR further claimed that assessment was finalized according to law and case was duly entered in the Demand and Collection Register on 30.06.2016, and demand notice was served on 02.09.2016.

8. During the proceedings, the DR informed that the Complainant had filed an appeal before the CIR(A). When confronted, the AR admitted that appeal against the order u/s 122(1) read with u/s 122(5) of the Ordinance has been filed on 29.09.2016. Perusal of record reveals that the subject complaint was admitted for investigation in this forum on 28.09.2016, and under provisions of section 9(2)(a) of the FTC Ordinance, 2000 the

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case was not subjudice in any appellant forum at the date of admission of complaint. Further perusal of record reveals that the CIR vide order dated 03.11.2016 has dismissed the appeal on the point of jurisdiction.

9. Both parties heard and record pursued by FTO. Thus FTO has issued aforementioned findings.

10. The instant representation has been filed by FBR. The Agency has argued that the complainant, an individual, derives income from sale of gold Jewellery. Return filed for tax year 2010 declaring taxable income at Rs. 156,000/- was deemed to be assessed U/S 120 of the ITO, 2001, (Ordinance). Subsequently, on the basis of definite information proceedings were finalized U/S 122(1) read with 122(5)/111 of the Ordinance at total income of Rs. 22,762,220/- creating a tax demand of Rs. 5,970.402/- on 30.06.2016 setting aside the order sheet entry dated 05.03.2012 in the instant case whereby no adverse inference was drawn. Being dissatisfied, the complainant lodged complaint before Honourable Federal Tax Ombudsman on 28.09.2016 on the main grounds that order U/S 122 (1), 122(5)/111 of the Ordinance is a duplicate, time barred and unjustified, The complainant also preferred appeal before Commissioner Inland Revenue (Appeal), (CIR (A)) Rwp on 29.09.2016. However, appeal filed by the CIR (A) was dismissed on the point of Jurisdiction as complaint in the instant case was pending before the Honourable Federal Tax Ombudsman.

11. The Agency has pointed out that the Honourable Federal Tax Ombudsman vide order bearing No. 1/662/11-lmpl dated Feb 23, 2017 concluded the findings that passing order U/S 122 (1) read with 122 (5) of the Ordinance without ascertaining true facts and without proper verification is tantamount to maladministration under the provisions of Section 2 (3) Federal Tax Ombudsman, Ordinance and recommended the FBR to "direct the CIR to review the time-barred order for the tax year 2010 passed arbitrarily: " The findings of the Honourable Federal Tax Ombudsman to review the time barred order are contrary to the law as order has been passed with in the time limitation i.e 30.06.2016.

12. The Agency has expressed that the Honourable Federal Tax Ombudsman has exceeded his jurisdiction in terms of Section (9)(2)(b) of the Establishment of Office of the Federal Tax Ombudsman Ordinance 2000. Further the complainant had the alternative & efficacious remedy provided in law to file an appeal before the CIR (A) prior to lodge complaint before Federal Tax Ombudsman. But the complainant failed to approach the CIR (A) prior to lodging complaint before the Federal Tax Ombudsman that is why appeal was rejected on the point of jurisdiction as the matter was subjudice before the Honourable Federal Tax Ombudsman.

13. The Agency prayed that in view of the above facts, no maladministration in involved in the case. It is prayed that the order of the Federal Tax Ombudsman may be set aside.

14. On the other hand, the Complainant has filed comments against the instant representation of Agency on 11.04.2017 through Raja Muhammad Ibrahim and supported the impugned recommendations/findings of learned FTO with request that the representation of Agency may be rejected.

15. 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.

16. 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.

17. It has been settled by the Supreme Court of Pakistan in case of Mst. Kaniz Fatima reported in 2001 SCMR 1493, that where a particular statute provides self contained machinery for determination of questions arising under the statute and law provides a remedy by appeal or revision to another forum fully competent to give any relief, any indulgence to the contrary by any other forum is bound to produce a sense of distrust in statutory forums and writ petition will not be maintainable without first availing the alternate statutory legal remedy. The FTO has no jurisdiction to set aside the order where the forum of appeal is available to the complainant. Thus the impugned findings are not sustainable and the representation is liable to be accepted.

18. 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, if so advised.

19. Accordingly, the President has been pleased to accept the instant representation of FBR-Agency and to set aside the impugned recommendations /findings of FTO.

The Chairman,
Federal Board of Revenue,
Islamabad.


(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

No. 71/FTO/2017 dated 17.07.2017

Copy for information to:

1. Raja Muhammad Ibrahim, New Siddique Jewellers, Sarafa Bazar, Chakwal.
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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