



8. On the other hand, the complainant has filed comments against the instant representation on 26.3.2016 and supported the impugned recommendations of learned FTO.

9. 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.

9. It has already been held vide order No. 88/FTO/2013 dated 05.06.2013 (corresponding Law Division's Summary No.73/2011-Law(FTO) dated 12.06.2013 in Complaint No. 90/LHR/IT(79)/204/2011), that: "matter pertained to assessment of income and determination of liability of tax as also interpretation of law and there is no dispute that legal remedy of appeal as well as revision was available under the Income Tax Ordinance 2001. Findings and recommendations of FTO are not sustainable." In another case No. 384/FTO/2013 dated 09.09.2013 (corresponding Law Division's summary No.50/2012-Law(FTO) dated 24.07.2013 in Complaint No. 181/LHR/IT (128)/ 355/ 2012), it has been held that: "there is no manner of doubt that the matter pertained to determination of liability of tax also involving interpretation of law/ rules relating to such determination and legal remedies of appeal are available under the said Ordinance 2001.... Findings do disclose that FTO has assumed unto himself the jurisdiction of appellate authority which is not permissible under the provisions of FTO Ordinance 2000. Findings and recommendations of FTO are therefore not sustainable."

10. 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.

11. 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.

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

  
Zulfikar Hussain Awan  
Director (Legal-II)

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.37/FTO/2016 dated 16.08.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. Mr. Tahir Mehmood, M/s Umer Traders, P-No.28/27, Circular Road, O/S Hamra Gat, Multan.
3. Mr. Niaz Ahmad, Advocate, M/s Ghulam Hussain & Company, Office No. 1, Muhammad Arcade, Multan.
4. Director to Secretary to the President.
5. Master file

Zulfikar Hussain Awan  
Director (Legal-II)

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