

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

Favourable

9

Federal Board of Revenue
Versus
Mr. Iftikhar Ali Shah, Kohat

SUB: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD AGAINST FINDINGS/RECOMMENDATIONS DATED 03.11.2016 PASSED BY THE FTO IN COMPLAINT NO. FTO-PSH/0000520/2016

I am directed to refer to your representation No.4 (520)/TO-I/2016 dated 27.01.2017 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 27.01.2017 has been filed by the Agency/FBR against the findings of the FTO dated 03.01.2017, whereby it has been held that:

"Both parties heard and record perused. The Respondent/Complainant was not confronted about any discrepancy or objection by issuing a notice by the Petitioner/Deptt and this issue has been raised belatedly only after the order was passed by this office. The Deptt could have verified the fact and rectify the error appearing in Tax Payment Challans. The burden of verification is squarely on the shoulder of the Deptt and such negligence/inefficiency is tantamount to maladministration. There is no mistake or omission in the earlier Findings/Recommendations dated 03.11.2016 and the Review Petition is rejected. FBR is directed to get the issue settled within 07 days and report compliance within 15 days."

Original findings dated 03.11.2016 of learned FTO provides as follows:-

"FBR to:-

- i. Direct the Commissioner to settle the Complainant's refund claim within 21 days; and
- ii. Report compliance within 07 days."

3. The brief facts of the case are that this is a complaint filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against non issuance of income tax refund for the tax year 2015 on account of excess tax paid U/S 236(A) of the Income Tax Ordinance (the Ordinance), 2001.

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 views vide letter dated 21 September 2016.

5. The AR explained that the Complainant purchased rights in open public auction from District Council Abbottabad to collect fee for Excise Duty and Royalty on minerals for the period relevant to tax year 2015. Tax was deducted @ 10% of the total bid money U/S 236(A) of the Ordinance. He contended that refund was claimed on account of excess deduction of tax by e-filing refund application on 03.12.2015 but despite repeated efforts, no order was passed U/S 170(4) of the Ordinance to settle the Complainant's refund claim within prescribed time limit which amounted to maladministration. The AR prayed that the Deptt be directed to issue refund without further delay.

6. Reiterating the written comments dated 02.09.2016, filed by the Commissioner, the DR admitted that the refund application was filed on 01.07.2016 but due to changes in jurisdiction refund claim could not be processed. They further claimed that required documents/evidence of tax payment was not filed and a letter was issued on 23.08.2016 to the Complainant requiring him to submit requisite documents. The DR pleaded that there was no maladministration on the part of the Deptt as pleaded that there was no maladministration on the part of the Deptt as the Complainant was responsible for delay in providing the required evidence.

7. Both parties heard and record perused by FTO. Thus FTO has issued aforementioned findings.

8. The instant representation has been filed by FBR. The Agency has taken ground that the complainant has claimed adjustable deduction of withholding tax at Rs. 50,01,655/- under Section 236A in the e-filed return of total income, but the evidence of tax deposited, produced by the taxpayer, reveals payment made under Section 147 of the Income Tax Ordinance, 2001. Hence, there is variation between the tax deposited through CPR and claimed in the return; therefore, the refund cannot be issued at this stage. Moreover, the issue relates to the interpretation of law which is outside of the jurisdiction of the Honourable Federal Tax Ombudsman as per Section 9(2) b of the FTO Ordinance, 2000.

9. The Agency has pointed out that delay in issuance of refund was on the part of the complainant instead of the department as the provision of Section in the adjustable tax, claimed in the return, are totally different from the provision of Section mentioned in CPRs. Hence, no negligence on the part of the department is established and no maladministration is involved in the instant case. The Commissioner Inland Revenue is empowered under the Income Tax Ordinance, 2001 to issue notice to the complainant to furnish documents/details/clarification for proper processing the claim of refund.

10. The Agency has apprised that it is incorrect assertion of the Honourable FTO that insertion of the correct section on Tax payment challan is the burden of the Tax department. Under the law, the burden of correction in

FBR (L-10) NO. 4-10-17
 Received in Chief (Legal) Office
 on 2-3-17

(21)

CPRs lies on the shoulder of the complainant as per SOP issued by the FBR through Circular No. 2(2) R.B/96PP-I dated 30.08.2008 but the complainant miserably failed to produce correct CPRs copies, tallied with the payment claimed in the return of total of income. Under the provision of sub Section 5(b) of Section 170 of the Income Tax Ordinance, 2001, the complainant is allowed to filed appeal before the Appellate Commissioner Inland Revenue under Part-III of this Chapter), in case the Commissioner Inland Revenue fails to pass an order under sub Section (4) of Section 170.

11. The Agency has contended that as the matter squarely relates to the determination of tax, assessment of tax liability and interpretation of law and is appealable under Section 5(b) of Section 170 of the Income Tax Ordinance, 2001, therefore the matter is outside the jurisdiction of the FTO is term of Section 9(2)(b) of the FTO Ordinance, 2000. Reliance is placed on the following orders of the Honourable President.

Sr. No.	Name of Case	Remarks
1.	FBR Vs Khalid Arbab, Peshawar	There is no question on the facts that he jurisdiction of the FTO is barred U/S 9(2) 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 review are available under the relevant legislation.
2.	FBR Vs Safdar Hussain	The President observed that FTO has no jurisdiction to set aside the order of assessment as forum of appeal is available with the complaint.
3.	Naik Faraz & Brothers Bannu Vs FTO/FBR	Representation filed by the complaint was rejected by the President with the observation that "the matter relates to inter-alia determination of liability of tax and accruing benefits under law, rules and regulations for which an efficacious remedy under Part-III (Appeals) of the ITO is provided."
4.	FBR Vs M/s Ideal Creation Pvt Ltd, Karachi	The President observed that FTO has no power to direct the Commissioner to exercise revision power U/S 122A.
5.	FBR Vs Rana Tariq Carriage Company Faisalabad	The President observed that the FTO has no jurisdiction to set aside the order which is appealable.

12. The Agency has prayed that order of the Honourable FTO dated 03.01.2017 may graciously be set aside in the interest of justice.

13. On the other hand, the Complainant has filed comments against the instant representation of Agency on 21.2.2017 through Mr. Raashid Umar Saroya, Advocate and supported the impugned recommendations/findings of learned FTO with request that the representation of Agency may be rejected.

14. After perusal of record and examination of all documents, it has been observed 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 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.

15. 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.

16. 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.

17. Accordingly, the President has been pleased to accept the representation of FBR and impugned findings/recommendations of learned FTO are set aside.

(Zulfiqar Hussain Awan)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.51/FTO/2017 dated 02.05.2017

Copy for information to:

1. Mr. Iftikhar Ali Shah, House No. 18, Happy Valley, Kohat Cantt, Kohat.
2. Mr. Raashid Umar Saroya, Advocate High Court, 205, 3rd Floor, Subhan Centre, Mauj Darya Road, Lahore.
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)