

228  
10

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

Federal Board of Revenue  
Versus  
M/s Techno Might Solution Pvt Ltd, Faisalabad

REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS  
DATED 3.12.2014 PASSED BY THE FTO IN REVIEW PETITION NO.43/2014 IN COMPLAINT NO.  
673/LHR/IT(508)/1193/2012

D1281e

I am directed to refer to your representation No.4(1193)TO-I/2012 dated 6<sup>th</sup> February, 2015 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 06.02.2015 has been filed by the Agency/ FBR against the findings dated 03.12.2014 of the FTO, whereby the Review Petition of the Agency has been rejected. In the original findings dated 10.07.2013 the following recommendations were made:

"FBR to

- I
- (i) initiate appropriate disciplinary action against the officials found responsible for issuing Circular No.6/2009 and inserting Clause 79 in the Second Schedule;
  - (ii) take immediate measures either to delete the Clause 79 from the Second Schedule of the Ordinance or to get it approved retrospectively by the Parliament; and
  - (iii) report compliance within 30 days".

3. The brief facts of the case are that the complainant - M/s Techno Might Solution (Pvt) Ltd approached the FTO on 31.08.2012 through Mr. Muhammad Saleem Babar, for not finalizing refund claim for tax years 2010 and 2011 respectively stating that refund application was filed manually and electronically along-with Income Tax Return and proof of tax deduction / deposited and that a fresh refund application was filed on 18.05.2012. The complainant sought direction for issuance of refund and compensation, the details of which are as under:

5915  
1/6/16  
11652

Sr.#	Tax Year	Taxable Income	Tax Paid	Tax Chargeable	Refund
1.	2010	137,540/-	319,916/-	8,6881/-	233,035/-
2.	2011	79,597/-	181,923/-	31,309/-	150,614/-

4. The Agency/FBR denied maladministration contending that the complainant is not entitled to any relief, stating that the complainant e-filed refund applications on 13.09.2012 for tax years 2010 and 2011 and that complaint has been asked to furnish evidence of tax deduction of Rs.68,626/- u/s 153(1)(a) has been declared under FTR, whereas tax deducted u/s 153(1)(b) at Rs.232,560/- was minimum tax as per the provisions of the said section as it was before amendment in 2011. In respect of refund claim for tax year 2011, the Agency contended that the complainant has declared gross sale at Rs.299,700/- while claiming tax deduction on payment of goods is claimed at Rs.179,145/- claiming credit against income declared under Normal Tax Regime, without furnishing evidence of tax deduction that gross turnover declared does not accord with tax deduction claimed as the same workout at Rs.7,165,800/- and thus Section 122(5A) attracts. The Agency as contended that complaint has been filed without complying various provisions of law and before the expiry of period of limitation stipulated in the law to finalize the refund claim.

P.T.O.

24

5. The FTO in his original findings observed that during the hearing the AR could not rebut the contention of the Deptt. However, the FTO further observed that the Finance Act, 2009 introduced the concept of minimum tax @ 6% of gross receipt of service providers that FBR issued clarification on 04.07.2009 and 17.07.2009 that tax deducted u/s 153(1)(b) of the Ordinance would be minimum tax. Thereafter, the FTO referring his earlier findings in C.No.286/LHR/IT(240)/577/2011 stated that after amendment in section 153 of the Ordinance through Finance Act 2009 all NTN holders providing services were ousted from benefit of refund and observed Circular No.6/2009 was unlawful and that exemption certificates were contrary to law. That Circular No.6 of 2009 was devised to dilute the changes brought in Section 153 of the Income Tax Ordinance 2001 through Finance Act, 2009 that after recommendations of FTO, the said Circular No.6 of 2009 was withdrawn abruptly to resolve to implement minimum tax on services as originally enacted expressed. However, on 31.10.2011, FBR issued SRO No. 1003(I)/2011 to amend the Second Schedule to the Ordinance, inserting Clause 79 to take companies rendering services out of the Minimum Tax Regime. FTO also observed that:

- The sequence of events narrated above makes it evident that the resurrection of Circular No.6 of 2009 through SRO No.1003(1)/2011 was a calculated move by certain elements within the FBR. Its purpose was also to shield those responsible for losses to revenue due to illegal issuance of exemption certificates in the past.
- The Complainant's claim for refund rests on the presumption that Section 153(3)(b) of the Ordinance was not applicable in the case of companies. It holds that Circular No.6 of 2009 was applicable in its case and there was no need for the complainant to rely on SRO.1003 to claim adjustment of deducted tax against demand.
- The Complainant's contention is misconceived as the changes in Section 153 of the Ordinance brought about through Finance Act 2009 regarding levy of minimum tax are applicable to all categories of taxpayer: individuals, AOPs and companies.
- SRO No.1003 issued by FBR on 31.10.2011 sought to undo minimum taxation on corporate service providers. This was against the intention of the Parliament when it enacted Finance Act 2009 and again when Section 153 was re-cast through Finance Act 2011.

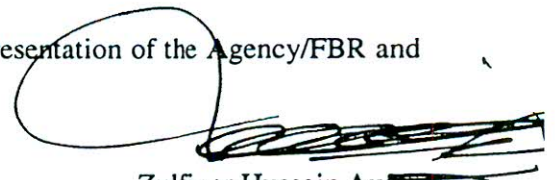
According to the FTO resurrection of Circular No.6 of 2009 and due to this reason the FTO accepted the complaint and made the relevant recommendations.

6. The Agency filed Review Petition on the ground that it was not within the powers of the FTO to interpret the statutory provisions which is in the purview of competent forum created by the statute and the opinion of any other person is not relevant. Two judgments have been passed by the Appellate Tribunal Inland Revenue (ATIR) and the view has been taken by the FBR that the FTO has no power to declare any law as illegal and cannot interfere with that matter. The FTO however rejected the Review Petition on the same ground on which the complaint was accepted.

Contd...P/3

7. The perusal of case record indicates that the stance of the Agency that the FTO was not justified in questioning the exercise of powers given by the statute in spite of the fact that the courts have approved the exercise of these powers within the parameters of law. It is established that the FTO is debarred from interpreting the law as it is the function of the courts. Hence FTO has gone beyond the scope of his functions under the garb of maladministration despite the Agency has brought to the notice of FTO that the courts have approved the law and Circular No.6 of 2009 was not contrary to the provisions of law and that as it was placed before the National Assembly through the Finance Bill. It was never withdrawn by the FBR and the clarifications issued by the Board did not indicate that the Circular was unlawful. FTO has no power to interpret the law. Even otherwise, the complainant has remedy to file an appeal after expiry of sixty days. 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.

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




Zulfiqar Hussain Awan  
Director (Legal-II)

✓  
The Chief (Legal),  
Federal Board of Revenue,  
Islamabad

No.01/FTO/2015 dated 30.5.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Techno Might Solution Pvt Ltd, C/o Muhammad Tahir Javaid, ITP S/o Ahmad Ali, Tahir & Company, 2<sup>nd</sup> floor, Pakland Plaza, Opposite District Court, Circular road, Faisalabad.
3. Director to Secretary to the President.
4. Master file.



Zulfiqar Hussain Awan  
Director (Legal-II)