

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

Federal Board of Revenue  
Vs  
Mr. Sadaqat Ali, Chichawatni

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS /  
RECOMMENDATIONS DATED 24.04.2017 PASSED BY THE FTO IN REVIEW PETITION  
COMPLAINT NO. FTO-MLN/0000002/2017**

I am directed to refer to your representation No. 4(02)S(TO-I)/2017 dated 19.05.2017 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 19.05.2017 has been filed by the Agency-FBR against the revised findings of the FTO dated 24.04.2017, whereby it has been held:

"7. As the issue of suo moto action has already been dealt with by this forum, this review application is also disposed of in the same manner with the observation that Commissioner IR should have reviewed the order, when some omission or irregularity is brought to his notice by the taxpayer.

8. The Review Petition is accepted and disposed of in the above terms".

Original findings of the FTO dated 05.01.2017 provides as follows:

"It is to inform that the Complainant's request for revision of order passed u/s 170 of the Income Tax Ordinance, 2001 was declined by the CIR vide impugned order passed u/s 122(A) of the Ordinance ibid. since the original order u/s 170 of the Ordinance ibid is appealable, therefore, the Commissioner had no jurisdiction to revise the same as described in Section 122A(4)a of the Ordinance ibid.

2. The Complainant had previously filed a complaint No. FTO/ MLN.0000871/2016 challenging the aforementioned order passed u/s 170 of the Ordinance, which was rejected in limine, vide order dated 27.12.2016, being appealable before the CIR (Appeals). This complaint too is not maintainable, hence stands rejected in limine. The Complainant is advised to move the concerned Appeal forum, under the relevant legislation, for the purpose".

3. The brief facts of the case are that the Complainant has filed review petition against the office order dated 05.01.2017 wherein his complaint being devoid of merits was rejected in limine.

4. The Complainant filed return for tax years 2011 to 2014 claiming refund of Rs. 0.976 million, followed by refund application alongwith evidence of tax deduction under Section 236A of the Income Tax Ordinance, 2001 (ITO, 2001). The Department failed to process the refund within time prescribed in law. Aggrieved, a Writ Petition No. 11862 of 2015 was filed in the Lahore High Court, Multan Bench, Multan which was disposed of on 25.08.2015 with direction to decide the pending application of the Complainant/ the Petitioner within a period of one month. As refund application was not decided within one month of the service of Court order a Crl Original No. 992-W of 2015 was filed on 03.10.2015 under Article 204 of the Constitution read with Sections 3&4 of the contempt of Court Ordinance, 2003 which was heard on 08.10.2015. The standing counsel was directed to ensure submission of Department's reply within a fortnight and the petition was relisted. In the meanwhile, the Departmental passed order of rejection of refund u/s 170(4) of the Ordinance on 29.09.2015 which was statedly served upon the Complainant on 10.10.2015. The Complainant alleged that the Department had tampered with the record to cover their incompetence and malafide and to escape contempt proceedings. Order claimed to have been passed on 29.09.2015 was actually back dated one. Notice No. 265 issued on 06.10.2015 asking for further details for processing of refund was an evidence that rejection was back dated to deceive the High Court by ensuring compliance of its earlier order dated 25.08.2015. The Complainant requested to Chief Commissioner IR to conduct inquiry in the matter and take action against the concerned officers vide application dated 26.10.2015, but to no avail. Then, a complaint No. 35/MLN/IT/17/23/254/2016 was filed before the FTO on 29.02.2016. During the processing of complaint it was

09 AUG 2017  
M(L)

Chief(L-I) ✓  
S(Lt-SC)  
S(Lt-SC)  
S(T-I) ✓  
S(T-II)  
Chief(L-II)  
S(Lt-HC) #  
SSO-A&A  
Chief(L-III)  
S(LDT)  
S(LDT)  
S(S)

FBR eDOX Dy. No. 97467-R  
Received in /Ch. Secy.  
on 09 AUG 2017  
NCP/08-08/12

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FBR e-Dox No. 97467  
Received in Chief (Legal) Office  
on 10/8/17

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revealed that application for revision under Section 122A of the Ordinance had also been filed on 11.01.2016 against the refund rejection order dated 29.09.2015. Since on the date of filing of aforementioned complaint on 29.02.2016, application for revision was pending for adjudication before the Commissioner IR and as the matter was subjudice before the Lahore High Court in Cri Original No. 992-W of 2015, the investigation was closed and case file consigned to record on 29.06.2016. Later, complaint No. MLN/0000872/2016 was filed on 23.12.2016 which was rejected in limine on 27.12.2016 on the ground that order in original passed under Section 170(4) of the Ordinance was appealable under Section 127 of the Ordinance *ibid* and the complaint was barred under Section 9(2)(b) of the FTO Ordinance. Third complaint number FTO-MLN/0000002/2017 was filed on 04.01.2017 against rejection of application for revision under Section 122A of the Ordinance on 14.04.2016 vide Order No. CIR/SWL/E&C/8643. The CIR rejected the application on the ground that the same was beyond the scope of Section 122A of the Ordinance being not based on suo moto action as required by law. This complaint was also rejected in limine on 05.01.2017 as under:

**“The Complainant’s request for revision of order passed under Section 170 of the Income Tax Ordinance, 2001, was declined by the CIR vide impugned order passed under Section 122(A) of the Ordinance *ibid*. since the original order under Section 170 of the Ordinance *ibid* is appealable, therefore, the Commissioner had no jurisdiction to revise the same as described in Section 122A(a) of the Ordinance *ibid*.**

**2. The Complainant had previously filed a complaint No. FTO-MLN/0000872 challenging the aforementioned order passed under Section 170 of the Ordinance, which was rejected in limine vide order dated 27.12.2016, being appealable before the CIR(Appeals). The complaint too is not maintainable, hence stands rejected in limine. The Complainant is advised to move the concerned Appellate Forum, under the relevant legislation, for the purpose”.**

5. Aggrieved, the Complainant has filed this Review Petition on 11.01.2017 to reconsider his complaint on the ground that the same was rejected without hearing the Complainant. According to the Complainant, failure to revisit the order of rejection of refund in terms of the provisions of Section 122A of the Ordinance was tantamount to maladministration, as it is well established legal principle that suo moto action requires some information for initiation of action to examine the record without which how the CIR can come to know about any irregularity or illegality for exercise of jurisdiction under Section 122A of the Ordinance.

6. The Review Petition was sent for comments to the Secretary, Revenue Division. In response, the Chief Commissioner IR vide letter No. 11650 dated 20.02.2017 forwarded comments of the CIR dated 15.02.2017. The Department contended that application for revision under Section 122A of the Ordinance was rejected on the ground that revision required suo moto action on part of the CIR. The filing of application for invoking the provision of Section 122A of the Ordinance was, thus needless. The Complainant can, however, file appeal under Section 127 of the Ordinance by the FTO. Thus, FTO has issued aforementioned findings.

7. The instant Representation has been filed by the Agency. The Agency has taken ground that order of the FTO is contrary to the spirit of law and against the facts and circumstances of the case. The FTO is supposed to not indulge in interpretation of provisions of Section 122A and force the Commissioner to entertain taxpayer’s case.

8. The Agency has pleaded that the application for revision u/s 122A of the ITO, 2001 was filed by the Complainant but was rejected by the CIR on the grounds that the Commissioner is not bound to entertain such applications on the request of the applicant. This action would have marred the very spirit of the relevant provision of law. The text of Section 122A clarifies that “the Commissioner may, suo moto call for record of any proceeding under this ordinance or under repealed ordinance in which an order has been passed by any officer of Inland Revenue other than the Commissioner (Appeals)”. The FTO by deciding that the Commissioner Inland Revenue should have reviewed the order as pointed out by the taxpayer, has gone *ultra vires*.

9. The Agency has apprised that taxpayer could have filed appeal before the CIR (Appeals) under Section 127 and the case was not qualified to be taken up under Section 122A of the ITO, 2001. Moreover, the question of the FTO’s jurisdiction regarding interpretation of law has been decided by the President of Pakistan. This fact is as clear as day light that the FTO cannot interpret law. In the order the President of Pakistan in C.No. 60/MLN/IT/38/469/2016 dated 15.11.2016 (Mr. Muhammad Ajmal Khan) has decided “As per law, FTO has limited scope to identify maladministration and debarred from interpreting the law as it is function of the courts. Thus, FTO has no jurisdiction to intervene in the matters where remedy by filing an appeal as a matter of right is available”.

10. The Agency has mentioned that while deciding the representation by the President on 15.11.2016 preferred by FBR against the findings dated 26.07.2016 passed by FTO in C.No. 60/MLN/IT/38/469/2016 relying on the decision of the Supreme Court of Pakistan that: "it has been settled by the Supreme Court 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 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. The Agency has pleaded that the Supreme Court has decided in para No. 63 of Criminal Petition No. 6 of 2012 in suo moto case number 4 of 2010 decided on 26.04.2012 that "interpretation of law is the exclusive domain of judiciary".

12. The Agency has contended that apart from the plethora of verdicts of the superior courts including the apex court of Pakistan, the FTO Ordinance, 2000 itself debars the FTO from interpreting law. This point is crystal clear in Section 9(2)(b) of the FTO Ordinance, 2000 which read that "the Federal Tax Ombudsman shall not have jurisdiction to investigate or inquire into matters which relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulation relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the relevant legislation".

13. The Agency has expressed that the action of FTO is self contradictory as is evident from the fact that the earlier three complaints of the same Complainant have been rejected by FTO on various grounds. But the review application has been unlawfully entertained and processed due to the reasons best known to them.

14. The Agency has prayed that decision of the FTO dated 24.04.2017 in the Complaint No. FTO-MLN/0000002/17 may be vacated.

15. On the other hand, the Complainant has not filed comments against the instant representation of Agency despite issuance of letters on 23.5.2017 and 9.6.2017 by this Secretariat.

16. 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.

17. Section 9(2)(a) of the FTO Ordinance 2000 provides that FTO shall not have jurisdiction to investigate or inquire into matters which are subjudice before a court of competent jurisdiction or tribunal or board of authority on the date of the receipt of a complaint, reference or motion by him.

18. 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.

19. 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.

20. 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.

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



Zulfiqar Hussain Awan  
Director General (Legal)

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.108/FTO/2017 dated 07.08.2017

Copy for information to:

1. Mr. Sadaqat Ali, Chak No. 37/12, Chichawatni, Sahiwal.
2. The Chief (Legal), Federal Board of Revenue, Islamabad.
3. The Registrar, Federal Tax Ombudsman Secretariat, Islamabad,
4. Director to Secretary to the President.
5. Master file.

(Zulfiqar Hussain Awan)  
Director General (Legal)

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