

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

FBR, Versus Mr. Abdul Sattar, Lahore

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD  
AGAINST FINDINGS / RECOMMENDATIONS DATED 23.12.2016 PASSED BY THE FTO IN  
COMPLAINT NO. FTO-LHR/0000912/2016**

I am directed to refer to your representation No. 4(0912)/TO-I/2016 dated 17.01.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 17.01.2017 has been filed by the Agency/FBR against the revised findings of the FTO dated 23.12.2016, whereby it has been held that:

**"FBR to:-**

- i. **Direct the Commissioner IR to review the orders U/S 122A of the Ordinance and settle the refund claims strictly in accordance with after allowing fair opportunity of hearing to the Complainant. Such action has been endorsed by Honourable President in numerous identical cases including a recent decision vide order No. 75/FTO/2015 dated 30.05.2016; and**
- ii. **Report compliance within 30 days."**

3. The brief facts of the case are that this complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against non issuance of Income Tax refund of Rs. 1,574,000/- for Tax Years 2011, 2012 and 2013.

4. The Complainant, an individual, filed Income Tax return for Tax Years 2011 on 21.11.2011 followed by e-filed refund application on 28.12.2014. Income Tax return for tax year 2012 was filed on 13.12.2013, followed by refund application on 09.01.2015 and return for tax year 2013 on 13.12.2013, followed by e-filed refund application on 09.01.2015. The refund arises on account of excess tax deduction U/S 236A (On receipts from auction proceeds) of the Income Tax Ordinance 2001 (the ordinance) as the taxpayer was engaged in the business of collection of toll fees and other levies under agreement with the National Highway Authority of Pakistan (NHA). No order u/s 170(4) of the ordinance was passed within the prescribed time nor any notice issued to the taxpayer to seek information/documents, if required. The complainant sent three reminders dated 13.03.2015, 30.04.2015 and 16.09.2016 for issuance of refund to the department but they elicited no response.

5. The department was confronted under Section 10(4) of the FTO Ordinance, and the reply of the CCIR, RTO, Sargodha dated 11.11.2016 was received. The department arises preliminary objection that as the orders passed were appealable under Ordinance, the jurisdiction of the FTO stands ousted under Section 9(2)(b) of the FTO Ordinance. Dept acknowledged receipt of refund applications of the taxpayer for the tax years 2011, 2012 and 2013 but stated that no documentary proof of deductions/payments in support of the refund claim was filed. Order under Section 170(4) of the Ordinance was passed on 24.08.2015 rejecting the claim of refund of the taxpayer for the three tax years.

6. Both sides heard and record perused by FTO. Thus FTO has issued aforementioned findings.

7. The instant representation has been filed by FBR. The Agency has taken ground that the recommendations of the Honourable FTO are not inconformity with established law and the provisions of Income Tax Ordinance, 2001. Therefore, representation U/S 14 of the Federal Ombudsman Institutional Reforms Act, 2013 is being preferred.

8. The Agency has pointed out that the issue involved in the instant case pertains to assessment of income and determination of tax liability. Therefore, the same is covered by the provisions of section 9(2)(b) of the Establishment of the office of the Federal Tax Ombudsman Ordinance, 2000. The Honourable President of Pakistan accepted the departmental representation in complaint No. 101/FSD/IT(70)/830/2014 observing as under:-

"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 (appeals), 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 or nay action or non action on the part

Mr. Mansoor  
SS(TO-I) (IR)  
IR. Discuss -  
[Signature]

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of official(s) of the Agency, it has the remedy to file an appeal at appropriate forum under the relevant law. In the circumstances, the impugned findings of FTO are not sustainable. Consequently the representation of the Agency is liable to be accepted."

9. The Agency has argued that the Federal Tax Ombudsman was not justified to direct the Commissioner Inland Revenue to invoke revisionary jurisdiction under section 122A of the Income Tax Ordinance, 2001 and vacate assessment finalized under Section 122 of the Ordinance as powers conferred to Commissioner IR u/s 122A are judicious proceedings in character (1965 SCC 234) and have to be exercised by application of mind independently without any directions from any other authority. Reliance is placed upon following.
- i) PLD 1992 SC 251 (H.S.R. Ahmad Vs A.S.J)
  - ii) 1965 SC-234
  - iii) (1991) 63 TAX 113 (H.C. Karachi)
  - iv) 1992 PTD 1671 (S.C)
  - v) 66 TAX (S.C)
10. The Agency has expressed that the Honourable President of Pakistan accepted the departmental representation in complaint NO. 345/LHR/IT/(230)/813/2014 on the similar issue deciding as under:  
*"It is an admitted fact that remedy of appeal is available against the amendment of tax assessment which is more exhaustive and appeal can be filed a matter of right. In presence of remedy of appeal the entertainment of complaint by the FTO and investigation is not justified."*
11. The Agency has elaborated that President of Pakistan recently accepted the representation in complaint No. FTO/LHR/IT/0000612/2016 on the similar issue i.e. the recommendations / directions to invoke provisions of Section 122A of the Income Tax Ordinance, 2001. The Honourable President held as under:-  
*"In such circumstance, 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. The Agency has prayed that the decision of the Federal Tax Ombudsman dated 23.12.2016 may kindly be set aside/ vacated.
13. On the other hand, the complainant has not filed comments against the instant representation of FBR despite issuance of letters dated 20.01.2017, 30.01.2017 and 7.2.2017 by this Secretariat.
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. 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.

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17. 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.

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

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

The Chairman,  
Federal Board of Revenue,  
Islamabad

No. 39/FTO/2017 dated 31.05.2017

Copy for information to:

1. Mr. Abdul Sattar, M/s Rajput and Company, Iqbal Street, House No. 56/1, Usmania Park, Sanda Khurd, Lahore.
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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