



63

the SRO 494(I) 2015 dated 30.1.2015 on the basis of consecutive non filing of sales tax returns and non compliance of show cause notice. The forum of ATIR is available for the taxpayer to submit the appeal under sub Section (b) of Section 46 of the Sales Tax Act 1990 against the order passed by the Commissioner Zone-II, RTO, and Hyderabad.

9. The Agency has argued that there was no maladministration involved in the case as in order to process the Blacklisting Order all the notices/letter for proceedings of blacklisting Order were issued and served upon the taxpayer in accordance with provisions of law.

10. The Agency has prayed that the judgment of FTO in this case, vide order dated 13.4.2016 may be reviewed and findings/recommendation of FTO may be vacated.

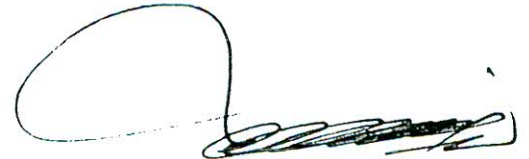
11. On the contrary, the complainant has filed comments against the instant representation of FBR/Agency on 24.5.2016 through MF Law Associates, and supported the impugned recommendations of learned FTO.

12. 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.

13. 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.

14. 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.

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



Zulfiqar Hussain Awan  
Director (Legal-II)

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.83/FTO/2016 dated 07.10.2016

Copy for information to:

1. Mr. Bhart Partner: M/s. Crystal CNG filling station, Survey No.155, Deh 108, Hyderabad road, Mirpurkhas
2. Mr. Muhammad Fahim Bhayo, Advocate, M/s M.F. Law Associates, F.No.Saba Commercial Wadhu Wah road, Near Abdullah town, Qasimabad, Hyderabad.
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
4. Director to Secretary to the President.
5. Master file.

167

Zulfiqar Hussain Awan  
Director (Legal-II)