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Commissioner IR, Zone-I did not agree with the said clarification and referred the issue to CCIR, who had taken up the matter with the FBR vide CCIR (HQ)RTO/jurisdiction/2014/3053 dated 05.06.2014. It was added that reply from FBR was still awaited. As regard demanding illegal gratification it may contended that liability of Rs. 3,10,0000/- already exited against the complainant whereas the refund claims of the complainant amounted to Rs. 28,200,000/- so, how one could demand an illegal gratification when he was not being paid anything, as in the first instance the existing liability had to be adjusted. About the online verification status the DR maintained that it only indicates the stance of the complainant as 'manufacturer' but on physical checking he was found to be a commercial importer and not a manufacturer. On a query that if the complainant was not a manufacturer then why the import GDs were sent to the Customs Collect-orate for the verification, in the written reply, it is contended that the taxpayer had claimed that excess tax was deducted from him at import stage under section 148 of the Income Tax Ordinance, 2001 for tax years 2011, 2012 and 2013. Before checking the legality of the case it was important to ascertain if the claims of excess deduction were correct or otherwise. If there was no excess deduction or any deduction, the question of legalities did not arise. The question of refund would have arisen if the tax deducted (duly verified) was in excess of tax liability.

7. The record of the case has been examined and arguments of both the sides considered. Thus FTO has issued the aforementioned findings.

8. The instant representation has been filed by the Agency-FBR. The Agency has pleaded that the complainant have had the efficacious remedies available u/s 45B & 46 of the Sales Tax Act, 1990 read with Rule 12 of Sales Tax Rules 2006 before the Commissioner IR (Appeals) and Appellate Tribunal IR, therefore, the complaint was not entertain able in the light of plethora of judgments issued by the office of President in such like matters.

9. The Agency has pointed out that the learned FTO had no jurisdiction u/s 9(2)(b)of the Establishment of FTO Ordinance, 2000 to pass an order by interfering in the instant case as legal interpretation concerning determination of tax coupled with blacklisting proceedings (i.e. Quasi judicial proceedings) u/s 21(2) of the Sales Tax Act 1990 by the respective Commissioner IR were involved therein. Therefore, the FTO has gone beyond his jurisdiction by entertaining the complaint & deciding it against the revenue.

10. The Agency has contended that the competent authority (i.e. Commissioner IR) by exercising his vested authority u/s 21 of the Sales Tax Act 1990 read with Rule 12(a)(G) of the Sales Tax Rules, 2006 notified vide SRO. 555(1)/2006 dated 5.6.2006 has not caused any discrimination whatsoever to the complainant who was one of the defaulters of established Govt revenue that came under the spree for suspension & blacklisting. Under the aforesaid Rules, the Commissioner IR can suspend (and subsequently blacklist) the registration on account of tax evasion or for any other reason to be specified by the Commissioner which in the instant case is default of revenue. The scope of the phrase "ANY OTHER REASON" is very infinite empowering the Commissioner to suspend/blacklist any person in good faith and in the best interest of Govt revenue subject to specifying / recording the reasons.

11. The Agency has mentioned that the recommendations/directions of the FTO with respect to restoration of STRN are contrary to the findings of said forum at Para-9 wherein, the FTO himself observed that the demand of illegal gratification could not be proved against the depts and still recommended the revocation of suspension of Registration (Para 7 of the FTO ordered may be referred to).

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12. The Agency has contested that no maladministration is involved on the part of processing officer. The action taken in the instant case was the requirement of law. Furthermore, the issue related to the determination of tax, assessment of tax liability and interpretation of law, hence the matter is outside the jurisdiction of the FTO in terms of Section 9(2)(b) of the FTO Ordinance, 2000. Reliance is placed on the following judgments of the President.

Sr. No.	Name of Case	Remarks
1	FBR vs Khalid Arbab, Peshawar	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 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 complainant.
3.	Naik Faraz & Brothers Bannu vs FTO/FBR	Representation filed by the complainant 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 2001 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 revisional powers 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.

13. The Agency has emphasized that the FTO has categorically refuted the claim of illegal gratification. However the suspension of the Registration has still been termed as vindictive which finding is based on no grounds. The suspension of Registration was made strictly in accordance with the law for default of tax payment due.

14. The Agency has underscored that the FTO in para-9 of the order, clearly stated that the complainant failed to produce any proof about the demand of illegal gratification, but did not allow compensation as claimed by the departmental Officers u/s 14(4) of the FTO Ordinance, 2000.

15. The Agency has prayed that by accepting this representation, the second and third recommendations of the learned FTO being against the law may graciously be set aside. Since the FTO has clearly stated that the complainant failed to produce any proof about the demand of illegal gratification, appropriate compensation as claimed by the departmental officers u/s 14(4) of the FTO, Ordinance 2000 may please be allowed.

16. 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

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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. 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.

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. Perusal of the record indicates that the recommendations of the FTO are in excess of his jurisdiction. Undoubtedly no adverse remarks can be recorded in PER of Officers i.e. Chief Commissioner, Commissioner and IRAO without following the legal course of action and without giving them an opportunity of hearing. Only the competent authority can initiate proceedings against officers and adverse action can be taken after following a proper legal procedure. 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. Thus FTO has no power to interfere in the service matter and has no authority that any adverse observations be recorded in the PERs including unnecessary conducting inquiry of various officers of rank and file just under the garb of maladministration.

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 (ii) and (iii) are not sustainable. Consequently, the relevant part of 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. FTO has made recommendation (i) which is only to the extent to direct the concerned Commissioner to decide the case under the relevant provisions of law with in 30 days. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the finding (i) of the learned FTO is quite sustainable. In such circumstances, this part of representation is liable to be rejected having no merits and the recommendation is sustainable and unexceptional.

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22. Accordingly, the President has been pleased to:-

- a) reject the representation of the Agency/FBR, as far as recommendation (i) is concerned and
- b) accept representation of FBR as far as recommendations (ii) & (iii) are concerned.



Zulfiqar Hussain Awan
Director (Legal-II)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.89 /FTO/2016 dated 31.08.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. Mr. Fakhr-e-Alam, M/s Khyber Tea & Food Company, Ashraf Road, Katchery Gate, Peshawar.
3. Director to Secretary to the President.
4. Master file

Zulfiqar Hussain Awan
Director (Legal-II)

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