

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

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FBR, Versus M/s Croplands (Pvt) Ltd, Multan

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD
AGAINST FINDINGS / RECOMMENDATIONS DATED 07.04.2017 PASSED BY THE FTO IN
COMPLAINT NO. FTO-MLN/0000850/16**

I am directed to refer to your representation No. 4(850)S(TO-I)/2016 dated 05.05.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 05.05.2017 has been filed by the Agency - FBR against the findings of the FTO dated 07.04.2017, whereby it has been held that:

"FBR to-

- i. Conduct inquiry and identify the officer(s)/ officials(s) responsible for acts of omission and commission in the instant case including pursuing recovery of tax after appellate decision and harassing the bank authorities;
- ii. Take appropriate disciplinary action against the officials found guilty of administrative excesses in the inquiry; and
- iii. Report compliance of action taken within 60 days."

3. The brief facts of the case are that these complaints have been filed under section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against illegal recovery of company's tax by resorting to coercive measure of attachment of bank accounts of its Directors and misuse of authority by tax officials. As facts and circumstances of these complaints are same, these are disposed of with this order.

4. Brief facts of the case are that tax demand was raised at Rs.1.296 million against the company under Sections 161/205 of the Income tax Ordinance, 2001 (the Ordinance), DCIR Unit-01, Corporate Zone, Multan, vide notice No, DCIR/U-01/RTO/ MN/447 dated 25.11.2016 initiated recovery proceedings under Section 140 read with Section 139 of the Ordinance, Bank accounts of the directors namely Mr. Bashir Ahmed Khan and Mr. Zubair Azhar were attached without issuing any notice under Section 138(1) of the Ordinance, Statedly, the Complainant's case falls within the jurisdiction of officer Inland Revenue, Unit-04, as per Commissioner IR, Corporate Zone's jurisdiction order No, CIR(Corporate Zone)/RTO-MN/272 dated 29.07.2016. The DCIR, Unit-01 who initiated the recovery proceedings had, therefore, no jurisdiction in these cases and this fact was communicated to him by the AR vide letter dated 02.12.2016. The AR informed the DCIR that the matter pertained to disputed liability and an appeal was pending before the Commissioner IR (Appeals) and so taking harsh measures before the decision in appeal would be unlawful as held in the case cited as 2016 PTD 1799. Thereafter, the Commissioner IR (Appeals) vide order dated 08.12.2016 annulled the assessment and cancelled the tax demand. The Complainant vide letter dated 08.12.2016 informed the DCIR, Unit-01 that in consequence of the order in appeal, there was no demand pending against the Complainant. Despite that, order of attachment of bank accounts was not withdraw. The Complainant then met the concerned Commissioner IR, but needful was not done. The AR vide letter dated 13.12.2016 once again requested the DCIR to withdraw the recovery notice, but no action was taken, hence these complaints.

5. The Complainant prayed to issue directions to the Deptt to withdraw the notice of attachment, refund the tax illegally recovered and take action against officer(s)/ officials(s) responsible for misuse of authority and harassing the Complainants. Further requested that the DCIR, Unit-01, Multan should pay damages and compensate financial loss occurred to the Complainant.

6. The Complaint was sent for comments to Secretary Revenue Division, in terms of Section 10(4) of the FTO Ordinance. In response, the Chief Commissioner IR vide letter C. No. CCIR/RTO-MN/9182 dated 02.01.2017 and CCIR/RTO-MN/10017 dated 18.01.2017 forwarded comments of the Commissioner IR, Corporate Zone, Multan bearing No.2627 dated 29.12.2016 and No. 2825 dated 16.01.2017. In its reply, the Deptt stated that notice under Section 138(2) of the Ordinance was issued prior to the issuance of notice under Section 140 of the Ordinance. Further stated that the Commissioner IR had delegated powers for recovery and issuance of recovery notices under Section 140 of the Ordinance. Further stated that the Commissioner IR had delegated powers for recovery and issuance of recovery notices under Section 140 of the Ordinance to the DCIR, Unit-01. According to the Deptt, appellate order/ intimation regarding annulment of assessment was received on 15.12.2016 and notice under Section 140 of the Ordinance was withdrawn the same day. Under the circumstances, it is stated that no mal-administration was involved in the case.

7. On the contrary, the AR provided jurisdiction order No. CIR(Corp Zone)/RTO-MN/272 dated 29.07.2016 in support of his contention that the Complainant's case fell within the jurisdiction of IRO, Unit-04

TO AUG 2017
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Chief(L-I)
S(Lt-SC)
SS(Lt-SC)
SS(T-I)
SS(T-II)
Chief(L-II)
S(Lt-IC)
SS(L-A&A)
Chief(L-III)
S(LDT)
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SES

F No. 99066
Received in Chief (Legal) Office
on 15/8/17

M(L)/11-08-17

FBR eDOX Dy. No. 99066-R
Received in Ch. Sect.
on 10 AUG 2017

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and only he could initiate recovery proceedings. The action of the DCIR/IRO, Unit-01 was thus without jurisdiction.

8. The DR attended the proceedings without proper record in support of Deptt's contention. He, however, produced some loose papers, but denied to have maintained any file having note sheet and record of proceedings conducted on the basis of letters/ applications filed by the AR. On the issue of jurisdiction, no plausible explanation was offered. Though, copy of notice under Section 138 of the Ordinance was produced, but the same was found lying in the file unserved. The parties heard and available record perused by FTO. Thus FTO has issued aforementioned findings.

9. The instant Representation has been filed by FBR. The Agency has taken ground that the complaint is prima-facie lodged against issuance of statutory notice u/s 140 of the Income Tax Ordinance, 2001 for recovery of income tax demand. The said amount has never been recovered by the department. In the instant case the notice u/s 140 was served upon the bank branch. The recovery proceedings were initiated as per Law and the notices were withdrawn without making any recovery after the receipt of verified copy of the order made by Commissioner Inland Revenue (Appeals), Multan.

10. The Agency has pleaded that a departmental enquiry in this regard has already been completed and it has been found that the recovery proceedings were initiated as per law and these proceedings were dropped without making any recovery. The office holds that the officer initiating recovery proceedings and proceedings u/s 140 of the Ordinance holds lawful jurisdiction over the case. Proceedings U/s 140 were initiated after exhausting other recovery measures under the law. No malafide was therefore involved in pursuing recovery of tax under the law through legal means.

11. The Agency has contended that the Hon'able FTO was not justified in his observation that notice u/s 138(1) of the Ordinance remained un-served since having been electronically issued which is valid service as per Rule-74 of the Income Tax Rules, 2002. The proceedings against the management of the Bank Branch has been initiated on the account of non-compliance of statutory notice u/s 140 inspite of the admittance of fact that they are holding money on behalf of the taxpayer. The same was, however filed without negative inference and recovery of tax as discussed in brief facts of the case.

12. The Agency has pointed out that the Honorable FTO was not justified to recommend disciplinary action against the officials for actions done in good faith in discharge of their official functions. Section 227 of the Income tax Ordinance, 2001 specifically prohibits such proceedings. It has already been endorsed by the H'ble President in the complaint No, 89,90,91,92/FTO/2015 dated 22.06.2016 order of the H'ble President titled as Mr. Muhammad Irfan Raza, CIR Zone-I, RTO, Gujranwala & others Vs Waheed Shahzad Butt, Lahore. Further reliance is placed in the order of the H'ble President in the complaint No. FTO-MLN/503/16& No.FTO-MLN/698/16 titled as FBR Vs M/s Fatima Medical Centre (Pvt) Ltd; Multan. The reliance is also placed upon the decision of H'ble President of Islamic Republic of Pakistan in the complaint No. 108/FSD/IT(76)/846/2016 titled as Federal Board of Revenue Vs Dr. Ashiq Hussain Malik, Multan. The relevant para No. 22 of the Order in the Complaint No, 108/FSD/IT(76)/846/2016 is reproduced hereunder for emphasis:-

"perusal of the record further indicates that the recommendations of the FTO are in excess of his jurisdiction. Undoubtedly no adverse remarks can be recorded in PER of officers or transfer from the field are strict disciplinary action without following the legal course of action and without giving 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 court. Thus FTO has no jurisdiction to intervene in the matters where remedy a filling 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 or strict disciplinary action of various officers of rank and file just under the garb of maladministration."

13. The Agency has prayed that the findings as well as recommendations of the Hon'able Federal Tax Ombudsman in Complaints No. FTO-MLN/0000850/2016 and No. FTO-MLN/0000851/2016 may be set aside. The same has been determined by the Hon'able President of the Islamic Republic of Pakistan in the parallel cases.

14. On the other hand, the complainant has filed his comments against the instant representation of FBR on 5.6.2017 through Rashid Bashir, CAF, ITP and supported the impugned recommendations/findings of learned FTO with request that the representation of Agency may be rejected.

15. 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

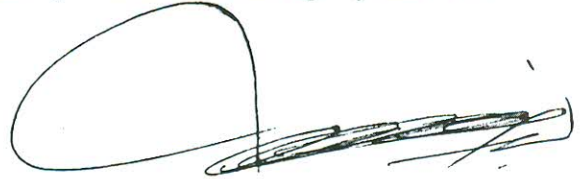
High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. In such circumstances, where remedy of appeal was available, FTO could not interfere with and could not pass orders under garb of maladministration.

16. 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.

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. 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 conducting unnecessary inquiry of various officers of rank and file just under the garb of maladministration. However, the complainant can seek remedy available to him from the relevant forums under the law if so advised.

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



(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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The Chairman,
Federal Board of Revenue,
Islamabad.

No. 95/FTO/2017 dated 07.08.2017

Copy for information to:

1. Mr. Zubair Azhar, M/s Croplands (Pvt) Ltd, 10, Nasheman Colony, Multan.
2. Mr. Rashid Bashir, Rashid & Company, Tax Consultants, Near Nisht School, Police Lines Road, Multan.
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad
4. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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