

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

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Federal Board of Revenue
Versus
Mrs. Farzana Amin

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE (FBR)
AGAINST FINDINGS / RECOMMENDATIONS DATED 04.07.2016 IN COMPLAINT NO. FTO-
KHI/0000597/2016

I am directed to refer to your representation No. 4(629)TO-I/2016 dated 28th July, 2016 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 28.7.2016 has been filed by the Agency/FBR against the findings of FTO dated 4.7.2016 whereby it has been recommended that:

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"FBR is, therefore, directed to advise the concerned Commissioner to guide/assist the Complainant for settling refund claim within 21 days and report compliance within 07 days thereafter."

3. The brief fact of the case are that the Complainant contests alleged unlawful deduction of tax on the exempt profit of DSCs purchased in Year 2002 and returned in 2012.

17/10/16
The complaint was sent for comments to Secretary, Revenue Division in terms of Section 10(4) of the FTO Ordinance, 2000. In response the FBR submitted is comments vide letter dated 25.5.2016.

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Husband of the Complainant appeared as Authorized Representative (AR) and claimed that the Complainant had purchased DSCs worth Rs. 150,000/- remained in 2002 for ten years which matured in the Year 2012. He claimed that at the time of purchase of DSCs, deduction of tax on profit was exempted. He further claimed that the amount invested in the purchase of saving certificates up to Rs.150, 000/- was also exempted from deduction of withholding tax up to 9.7.2013, when new Circular dated 9.7.2013 was issued withdrawing exemption of withholding tax on any amount of investment in savings schemes. The AR contended that tax was unlawfully deducted on the profit of Complainant's DSCs which were encashable in 2012. He prayed that the deptt be directed to refund the amount deducted unlawfully and arbitrarily.

6. Them Department Representative (DR) admitted that profit on DSCs purchased in the Year 2002 were exempted at the time of its maturity in the Year 2012. However, reiterating written comments dated 25.05.2016, he contended that through Finance Act 2013, the exemption on profit of DSCs and other saving certificates have been withdrawn if such certificates were encashed on 01.07.2013. He referred to provisions of Section 151 of the Income Tax Ordinance 2001 (the Ordinance) in support of his arguments. He averred that in view of the present legal position, the deduction of tax on the complainant's profit was justified as the complainant had formally re-invested the DSCs on 17-01-2015 after the maturity period had already ended in the Year 2012.

7. Both the parties have been heard and record perused by FTO. Thus FTO has issued the aforementioned findings.

8. The instant representation has been filed by the Agency-FBR. The Agency has taken ground that as per the Standard Operating Procedure of (CDNS), the DSCs schemes operate on a cash accounting basis. Accordingly profit on DSCs is credited to the client's account at the time of encashment i.e. when the legal instrument (the DSC) is presented to the National Savings Officer. In other words, no withholding tax is deducted at the time of maturity of the DSC. On the date of maturity the client's total investment, including the profit (without any tax deduction) is automatically re-invested. It is only at the time of encashment of the DSC that tax is deducted from the total profit accrued, from the time of the initial or primary investment.

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9. The Agency has pointed out that the mode of operation of the chargeability of tax on DSCs is in accordance with the law. Section 151 of the ITO 2001 directs the payer of profit on debit under National Saving Scheme to deduct tax at the time "the profit is paid" to the recipient. Similarly, Section 158 of ITO 2001 specifies the time of deduction as the time "the amount is paid or credited to the account of the recipient." As elaborated above, under the cash accounting system operated by the CDNS, the amount is paid/credited to the recipient, at the time the legal instrument (the DSC) is presented before the National Savings Officer for encashment. Relevant parts of Section 151 and Section 158 of ITO, 2001 are reproduced below for ready reference.

"151. Profit on debt-

(1) Where-

(a) a person pays yield on an account deposit or a certificate under the National Saving Scheme or post office savings accounts;

The payer of the profit shall deduct tax at the rate specified in Division IA of Part-III of the First Schedule from the gross amount of the yield or profit paid as reduced by the amount of Zakat, if any, paid by the recipient under the Zakat and Ushr Ordinance 1980 (XVII of 1980) at the time the profit is paid to the recipient."

"158. Time of deduction of tax. _

A person required to deduct tax from an amount paid by the person shall deduct tax –

(a) In the case of deduction under Section 151 at the time the amount is paid or credited to the account of recipient whichever is earlier."

10. The Agency has contended that under the circumstances the contention of the Complainant that her DSCs are not covered by the Govt order of 9.7.2013 since they matured on 2012, i.e. before the date of implementation of the said Govt Order i.e. 1.7.2013 is incorrect. This is because the relevant date for tax deduction under the cash accounting system operated by CDNS is the date of encashment (which in this case was evidently after the date of implementation of the order) and not the date of maturity. Hence withholding at the time of encashment has rightly been made.

11. The Agency has pleaded that the Complainant's other contention that the wording of Govt order of 9.7.2013 does not cover DSCs is also not tenable. The said order refers to "all transactions made at the National Saving Centre (which are liable to withholding tax) when requiring deduction of tax at the rates prescribed vide Finance Act 2013. DSCs are instrument which are "liable to withholding tax" and this wording of the order was intended to exempt transactions in instruments such as Pension Certificates which are not 'liable to withholding tax'. Therefore it is clear from this wording that DSCs of whatever value are by virtue of this order subject to deduction of withholding tax "irrespective of the date of investment".

12. The Agency has prayed that:

- i. The FTO has gone beyond the scope of its jurisdiction and powers given to it under the FTO Ordinance 2000.
- ii. The instant findings/recommendations of the FTO may be vacated as it is without reasonable cause and devoid of merits since the withholding of taxes at the time of encashment in the Year 2015 has been made in accordance with law.

13. On the contrary, the Complainant has filed essential comments against the instant representation of FBR on 6.8.2016 and supported the impugned recommendations of learned FTO.

14. In terms of Section 9(2)(b) of the FTO Ordinance 2000, the FTO has no jurisdiction to investigate or inquire into the matters which relate to the assessment of income, determination of liability of tax, interpretation of

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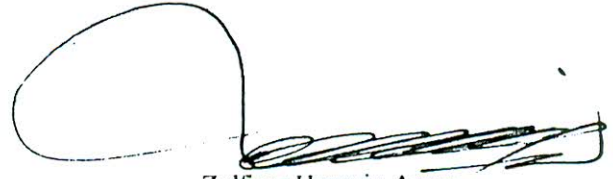
law, rules and regulations relating to the said assessment/ determination in respect of which legal remedies of an appeal, review or revision are available under the relevant legislation.

15. It has already been held vide order No. 88/FTO/2013 dated 05.06.2013 (corresponding Law Division's Summary No.73/2011-Law(FTO) dated 12.06.2013 in Complaint No. 90/LHR/IT(79)/204/2011), that: "matter pertained to assessment of income and determination of liability of tax as also interpretation of law and there is no dispute that legal remedy of appeal as well as revision was available under the Income Tax Ordinance 2001. Findings and recommendations of FTO are not sustainable." In another case No. 384/FTO/2013 dated 09.09.2013 (corresponding Law Division's summary No.50/2012-Law(FTO) dated 24.07.2013 in Complaint No. 181/LHR/IT (128)/ 355/ 2012), it has been held that: "there is no manner of doubt that the matter pertained to determination of liability of tax also involving interpretation of law/ rules relating to such determination and legal remedies of appeal are available under the said Ordinance 2001. . . . Findings do disclose that FTO has assumed unto himself the jurisdiction of appellate authority which is not permissible under the provisions of FTO Ordinance 2000. Findings and recommendations of FTO are therefore not sustainable."

16. 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.

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 representation of the Agency/FBR and set aside the impugned recommendations/findings of learned FTO.



Zulfiqar Hussain Awan
Director (Legal-II)

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The Chairman,
Federal Board of Revenue,
Islamabad

No. 119/FTO/2016 dated 04.10.2016

Copy for information to:

1. Mrs. Farzana Amin, House No. I-867, Street No. 40, Block-C, Loi Bher, Islamabad.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. Director to Secretary to the President.
4. Master file.

Zulfiqar Hussain Awan
Director (Legal-II)

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