



10. Agency has pleaded that efforts were made to recover the adjudged amount of Rs.2,015,323 from the AOP M/s Idara-e-Kissan. Action u/s 48 of the act was initiated and bank accounts in the name of the AOP along with those which were in name of the partners, were attached and Rs.403,066/- from bank account of one of the partners i.e. Mr. Mubashar Ijaz Awan, was recovered.

11. Agency has contended that the Federal Tax Ombudsman, without considering the Department's view point, passed the Findings/ Recommendations/ Decision vide No. 438/LHR/ST(101)/1425/2015 as following:

FBR to direct the Chief Commissioner RTO-I, Lahore to-

- i. Report compliance within one week thereafter.
- ii. Refund the amount recovered from bank account of the Complainant within 10 days; and
- iii. Report compliance within one week thereafter.

12. Agency has contested that M/s Idara-e-Kissan bearing NTN 2530774-6 and STRN 0305200900664 is registered as manufacturer cum Distributor/Retailer and Mr. Mubashir Ijaz Awan is a declared partner 20% shareholding in the defaulter unit.

13. Agency has mentioned that since, Mr. Mubashir Ijaz Awan is partner in AOP, and in case of any default on the part of AOP, partners are personally liable to pay the outstanding tax liability, hence disputed amount was rightly recovered from the complainant. Further more just to put on record, part of out standing demand was also recovered from another partner Mr. Noor-ul-Hassan Tehseen bearing CNIC 35202-7479833-3 through attachment of his bank account under section 48 of the Sales Tax Act, 1990.

14. Agency has prayed that the impugned findings/recommendations/decision dated 25.3.2016 made by the FTO in Complaint No.438/LHR/ST(101)/1425/2015 may be cancelled being against the facts of the case and the relevant law. There is no maladministration on the part of the deptt.

15. On the contrary, the complainant has filed comments against the instant representation of FBR on 26.5.2016 and supported the impugned recommendations of learned FTO.

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 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. 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.

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




Zulfiqar Hussain Awan
Director (Legal-II)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.77/FTO/2016 dated 07.10.2016

Copy for information to:

1. Mr. Mubashar Ijaz Awan, 44- Nizamabad, Near Tajpura, Shad Bagh Lahore.
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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