

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

Federal Board of Revenue
Versus

M/s Inham & Co, Abbottabad

21 DEC 2017

M(L)

REPRESENTATION REFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 28.07.2017 PASSED BY THE FTO IN REVIEW PETITION COMPLAINT NO. FTO-ATD/0000017/2017

I am directed to refer to your representation No. 4(17)S(TO-I)/2017, dated 31.08.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 31.08.2017 has been filed by the Agency-FBR against the findings of the FTO dated 28.07.2017 whereby it has been held that:

"FBR to-

- (i) Direct the concerned Commissioner to vacate the penalty orders by invoking the provision of Section 122A of the Ordinance for providing proper opportunity of hearing to the Complainant;
- (ii) Issue refund due to the Complainant without further delay; and
- (iii) Report compliance within 45 days".

3. Brief facts of the case are that the Complainant, an AOP, contests non-implementation of findings of FTO dated 22.12.2016 for tax years 2010 to 2015 and imposition of penalty to deprive the Complainant of due amount of refund by withholding/ adjusting refund amount of tax years 2010 to 2015.

4. The complaint was forwarded to Secretary, Revenue Division and Chief Commissioner Inland Revenue Division, Regional Tax Office, Abbottabad for reply/ comments, which were received from CCIR letter C.No./RTO/ATD/2017-2018/8292 dated 19.04.2017.

5. The AR explained that:

- (i) The Complainant's previous complaint was disposed of by this office vide Findings/ Recommendations dated 22.12.2016 directing the Respondent to issue refund in accordance with the provisions of law within 21 days for tax years 2010 to 2015;
- (ii) The orders of the Hon'ble President were also cited in the said Findings/ Recommendations in support of those directions;
- (iii) No Review Petition or Representation to the Hon'ble President was filed by the Respondent against the order dated 22.12.2016 and so the said order attained finality;
- (iv) Instead of implementing the directions given by this office, the Deptt issued notices and imposed penalties u/s 182 of the Income Tax Ordinance, 2001 (the Ordinance) on account of alleged late filing of returns of income, and as such the Deptt has committed Defiance under the provisions of FTO Ordinance cognizable under Section 12 read with Section 16 of the FTO Ordinance, 2000."

6. The AR contended that the Complainant has been a contractor of construction who filed statements of income under Section 115 of the Ordinance as contractors were not required to file returns of income under Section 114 of the Ordinance in FTR cases (who filed statement under Section 115 of the Ordinance). He cited judgment of ATIR, vide ITA No. 2147/LB/2012 dated 23.04.2013, wherein it was held that in FTR cases, penalty could not be imposed. Relevant para of the judgment is reproduced as under:

"A cumulative reading of the aforesaid provision makes it clear that income covered under final taxation provisions of the Ordinance is not chargeable to tax under any head of income and is, therefore, not part of income. On the other hand, basis for imposition of penalty under S.No.1 of the table u/s 182 (1) is tax payable on 'taxable income'. Since the appellant has not derived any taxable income during the year under consideration, therefore, the imposition of penalty on the said basis is contrary to express provisions of law and has rightly been deleted. We have no hesitation to confirm the order of the learned CIR (Appeals). Penalty imposed is also not maintainable as no deliberately willful default has been established by the assessing officer".

The AR further contended that not only imposition of penalty was arbitrary and unlawful, just to adjust the refund amount, but the Dept'l officer(s) was/were guilty of Defiance of the directions of this Forum. He prayed that

Chief(L-I)
S(L-SC)
SS(L-SC)
SS(T-I)
SS(T-II)
Chief(L-II)
S(L-HC)
SS(L-A&A)
Chief(L-III)
S(LDT)
S(LDT)
SPS

FBR eDOX Dy. No. 15412-R
Received in /Ch. Sectl
on 21 DEC 2017
PO (4) 22-12-17

In Mr
Pl. also update
in booklet &
plot on
FBR website
as compliance
22/12/17

