

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

Federal Board of Revenue

Versus

M/s S.S.J Property Centre, Faisalabad

01 FEB 2018

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 10.10.2017 PASSED BY THE FTO IN COMPLAINT NO. FTO-FSD/000055/2017

I am directed to refer to your representation No. 4(55)(TO-I)/2017, dated 06.11.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 06.11.2017 has been filed by the Agency-FBR against the findings of the FTO dated 10.10.2017 whereby it has been held that:

"The FBR-

- i. To direct the Commissioner IR to vacate the provisional assessment, withdraw notices under Section 140 of the Ordinance and settle the issues, as per law after providing proper opportunity of hearing to the Complainant within 45 days; and
- ii. Report compliance within 07 days thereafter."

3. The brief facts of the case are that the complaint was filed under Section 10(1) of the FTO Ordinance, 2000 against recovery notice under Section 138(1) and 140 of the Income Tax Ordinance, 2001 (ITO, 2001).

4. According to the Complainant, the Deptt initiated proceedings for recovery of tax amounting to Rs. 21.986 million, in consequence of provisional assessment order dated 25.08.2016 under Section 122C of the Ordinance for the tax year 2014. On receipt of the provisional assessment order on 29.08.2016, the Complainant filed manual return in the status of AOP under the name and style "SSJ Property Center" on 05.10.2016 and e-filed returns of its members namely Muhammad Afzal and Muhammad Safdar Awan bearing registration No. 3310014739923 and 3310037155007 respectively. Thereafter, the Complainant applied for cancellation of provisional assessment vide letter dated 05.10.2016 on the ground that return in the case of AOP was filed manually, as per law within the stipulated period of 45 days in terms of the provisions of Section 122C(2) of the Ordinance. As no NTN was given in the assessment order and demand notice, the return could not be filed online in IRIS. Further contended that there was no requirement to file return electronically, as per first proviso of Section 122C(2) of the Ordinance.

5. The complaint was sent for comments to the Secretary, Revenue Division, Islamabad in terms of Section 10(4) of the FTO Ordinance. In response, the Chief Commissioner IR vide letters No. CC/RTO/FSD/660 dated 23.06.2017 & No. 136 dated 14.07.2016 the Commissioner IR, Lyallpur Zone vide No. CIR/Lyp.zone/RTO/FSD/3776 dated 22.06.2017 & No. 72 dated 13.07.2017 & No. 684 dated 20.09.2017 submitted comments raising preliminary objections that the matter relates to the determination of tax liability and assessment of income and as such, this fora had no jurisdiction to investigate or inquire into the matter in terms of the provisions of Section 9(2)(b) of the FTO Ordinance. Reliance was placed on President's decision in Representation in C.No. FTO-FSD/0000568/2016. Further stated that notice under Section 140 read with Rule 69 of the Income Tax Rules 2002 was issued prior to the receipt of intimation from the Complainant regarding filing of complaint. However, after receipt of intimation regarding filing of complaint, no action was taken against the Complainant, therefore, no violation of Section 18 of FOIRA-2013 was committed. According to the Deptt, the Complainant violated the provisions of Rule 73(2D) by not e-filing return of income for tax year 2014 whereas, it was mandatory for any AOP to e-file return from 1st day of July 2009 onward. Further contended that it was the responsibility of the Complainant to obtain NTN from the Deptt and efile return than putting responsibility to the Deptt to issue NTN suo-moto.

6. On the contrary, the AR contended that rules are subservient to law. Section 122C of the Ordinance does not provide to file return of AOP electronically. In support, he referred to the findings/ recommendations in C.No. 80/ISD/IT(50)/939/2012 dated 04.07.2012 by FTO. Thus, FTO has issued aforementioned findings.

7. The instant Representation has been filed by the Agency. The Agency has taken ground that the jurisdiction of the FTO is clearly barred under Section 9(2)(b) of FTO Ordinance, 2000 to investigate or inquire into matters which relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedy of appeal, review or revision is available under the Relevant Legislation.

8. The Agency has stated that the FTO has recommended to direct the Commissioner (IR) to vacate the Provisional Assessment under Section 122C of the ITO, 2001 which involves an assessment of income and determination of liability. It is beyond the mandate of the FTO to direct Commissioner (IR) to exercise his exclusive power or review under Section 122A. Moreover, in complaint No. 214/FSD/IT(167)/2015 (FBR Vs Mian Bashir

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

FBR eDOX Dy. No. 13471-R
Received by Ch. Sect.
on 01 FEB 2018

SSCTO
John Shaha
relat his booklet
& upload in
FZR website
in 2/2/18
KSAI POF
2/2/18

Ahmad, Faisalabad) decided by the President of Pakistan, it has been held that the FTO cannot direct to exercise the power of review under Section 122A as this power is exclusively for the Commissioner.

9. The Agency has pointed out that the taxpayer AOP filed its return of income manually whereas e-filing of return was mandatory under Rule 73(2D) from 01.07.2009. In order to e-file the return, an AOP has to be enrolled with the online system of the Board. The procedure for e-filing is provided in Rule 80-A of the ITO, 2001. The findings of the FTO are contrary to law as no maladministration is committed on the part of the Department.

10. The Agency has mentioned that although the Commissioner (IR) may register a person under Section 181 subsection (2) of the ITO, 2001 where ever he is satisfied that the person is liable to be registered yet it does not absolve the AOP from legal obligation of applying for registration in prescribed manner provided in subsection (1) of Section 181 of ITO, 2001. It is beyond the jurisdiction of FTO to interpret Section 181 of ITO, 2001 and Rules thereunder in favor of the taxpayer to the disadvantage of the Department.

11. The Agency has underscored that the instant complaint was filed on 09.06.2017 which was decided by the FTO on 10.10.2017 after 143 days, whereas the FTO has been restricted under Section 11 of FTO Ordinance, 2000 to decide the complaint within 60 days from date of receipt of the complaint. The FTO has not observed the stipulated time restriction as per Section 11 of FTO Ordinance, 2000.

12. The Agency has prayed that as no maladministration has been committed by the Department, therefore, the impugned recommendations may very graciously be set aside.

13. On the other hand, the complainant has filed his written comments against the instant representation of FBR on 10.11.2017 and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.

14. After perusal of record and examination of all documents, it has been noted 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.

15. FTO has no jurisdiction to intervene in the matters where remedy by way of filing an appeal as a matter of right is available. FTO cannot direct for exercise power of review u/s 122A as this power exclusively for Commissioner. FTO has no power to set aside earlier passed order by Competent Authority. In such circumstances, the impugned findings/recommendations are not sustainable and are liable to set aside by accepting the representation of the Agency.

16. The issuance of Show Cause Notice is not a negative inference as the Complainant has an opportunity to file reply and put forward its case. In case of an adverse order, the Complainant has remedy to file appeals as a matter of right to the Commissioner (Appeals), Appellate Tribunal, High Court and the Supreme Court. In case the impugned SCNs are asked to be withdrawn then there will be no remedy available with the Department to check the irregularity, if any, in the matter.

17. 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.

18. 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.

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, if so advised.

20. 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)

✓
The Chairman,
Federal Board of Revenue,
Islamabad.

No. 163/FTO/2017 dated 29.01.2018

Copy for information to:

1. M/s S.S.J Property Centre, 299-A, Peoples Colony, Faisalabad.
2. Mr. Naveed Anwar Bhatti, Advocate, 299-A, Peoples Colony, Faisalabad.
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)