

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

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