

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

Shaikh Nadeem Rehmat, Karachi
Versus
Federal Board of Revenue

21 DEC 2017

M(L)

REPRESENTATION PREFERRED BY SHAIKH NADEEM REHMAT, KARACHI AGAINST FINDINGS / RECOMMENDATIONS DATED 01.08.2017 PASSED BY THE FTO IN COMPLAINT NO. 227/KHI/TT/2017

I am directed to refer to your representation No. NIL, dated 23.08.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 23.08.2017 has been filed by the Complainant-Shaikh Nadeem Rehmat against the findings of the FTO dated 01.08.2017 whereby it has been held that:

"FBR to direct the Commissioner-IR to-

- (i) Allow appeal effect to the Appellate Order dated 25.01.2017 and issue refund due, as per law, and;
- (ii) Report compliance within 45 days thereafter".

3. Brief facts of the case are that the complaint has been lodged in terms of Section 10(1) of the FTO Ordinance, 2000 against non issuance of refund as a result of appellate decision for the tax year 2015.

4. The Complainant, an individual engaged in construction and sale/purchase of motor vehicles, filed return of income for the tax year 2015 declaring total income at Rs. 104.200 million. According to AR, the Deptt amended the assessment for tax year 2015 under Section 122(5A) of the Income Tax Ordinance 2001 vide order dated 31.12.2016 and created huge demand of Rs. 6.380 million. The Complainant preferred appeal against the above order. The Commissioner-IR (CIR) (Appeals-IV), Karachi vide order dated 25.01.2017 deleted the entire additions made by the Deptt. The AR contended that although after the appellate order dated 25.01.2017 the demand was no more outstanding against the Complainant on 06.02.2017, the Deptt unlawfully attached Bank account and recovered an amount of Rs. 2.789 million was recovered under Section 140 of the Ordinance. The Complainant approached the Deptt. to refund the amount illegally recovered from the Bank and was told to file refund application, which he filed on 13.03.2017. However, thereafter, despite repeated efforts of the Complainant, the Deptt. failed to issue refund of the amount which was recovered from bank account when no demand was outstanding against him.

5. The complaint was referred to the Secretary Revenue Division for comments in terms of Section 10(4) of the Ordinance. In response, the CIR Zone-III, RTO-II, Karachi submitted parawise comments on 07.05.2017. It was contended that till 06.02.2017, CIR (Appeals) order dated 25.01.2017 was not received and the Deptt had rightly recovered tax liability which was outstanding against the Complainant. It was further contended that Appellate Order was served on the CIR on 07.02.2017 and no refund was determined, as yet.

6. The AR argued that on 06.02.2017 the Deptt. had unlawfully recovered from the bank a tax liability which was no more outstanding against the Complainant but the Deptt on the same day when the Appellate Order was served on the CIR i.e. 07.02.2017, deposited Demand Draft amounting to Rs. 2.789 million in haste. He further claimed that even after filing refund application dated 13.03.2017, the Complainant repeatedly approached the Deptt. for refund but to no avail. The averments of both the parties have been given due consideration and case record perused. Thus, FTO has issued aforementioned findings.

7. The instant Representation has been filed by the Complainant. The Complainant has taken ground that the order of the FTO is bad in law and admitted facts hence is contrary to the provisions of FTO Ordinance, 2000 and is not sustainable in law and is liable to be set aside. The FTO has not judicially passed the order.

8. The Complainant has expressed that the amount was recovered illegally on 06.02.2017 when there was no demand. Pay order dated 06.02.2017 was deposited illegally on 07.02.2017 when the Appellate Order dated 25.01.2017 was delivered in the office of the Respondent. Respondents were bound to issue refund with compensation.

9. The Complainant has illustrated recovery made through attachment under Section 140 without recourse to Section 138 of the Income Tax Ordinance, 2001. Maladministration on the part of Respondent necessarily warrant disciplinary action.

10. The FTO has pleaded that the fact that if the Respondents are left with free hands in that they will continue to play foul against the taxpayers like the Appellant complaint. The FTO has not recommended any action against the Respondent nor did has directed to issue refund with compensation.

11. The Complainant has prayed that the Appellant craves the leave of this august Forum to add, amend or urge further grounds on or before the hearing of this Representation.

On the other hand, the Agency has pleaded that the demand was recovered lawfully indicating that:

- a) As legal order u/s 122(5A) was in the field on 6.2.2017.

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SS(Li-SC)
SS(T-I)
SS(T-II)
Chief(L-II)
Si(Li-FC)
SS(L-A&A)
Chief(L-III)
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- b) The pay order was deposited in national exchequer well before the receipt of appellate order on 7.2.2017, the pay order was deposited in the morning and appellate order was received in the evening .
- c) Recovery was rightfully made by exercising section 140 of the Ordinance.
- d) No maladministration was committed. Department performed its duties as envisage in law.

13. The Agency has pointed out that the FTO has already provided relief to the appellant complainant. The department will continue to performs its duties and functions as provided under law.

14. The FTO has recommended to give appeal effect and to issue refund as per law. The FTO has given 45 days to the department to implements its findings/recommendations.

15. The Agency has requested that Hon'ble President of Pakistan may like to reject the representation in limine.

16. After perusal of record and examination of all documents, it has been observed that it is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the Commissioner-IR to allow appeal effect to the Appellate Order dated 25.01.2017 and issue refund due, as per law, within 45 days thereafter. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the findings of the learned FTO are quite sustainable and the Complainant has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the recommendations/findings of FTO are sustainable and maintainable being unexceptional in nature.

17. This representation has been filed by the Complainant repeating the contents of the pleadings already made before the learned FTO. Nothing turns on the same as it fails to answer the reasoning of FTO and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the FTO. Undoubtedly FTO decision is based on sound reasoning and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability.

18. Accordingly, the President has been pleased to reject the instant representation of Complainant—Shaikh Nadeem Rehmat and impugned recommendations/findings of learned FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

Shaikh Nadeem Rehmat,
R/o 35-E, Block-6, PECHS,
Karachi.

No. 147/FTO/2017 dated 18.12.2017

Copy for information to:

1. ✓ The Chairman, Federal Board of Revenue, Islamabad.
2. Mr. Ghazanfar Ali Jatoi, Suit No. A-608/A, 609, Saima trade Tower, I.I. Chundrigar Road, Karachi.
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)