

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

M/s Fatima Enterprises Ltd, Multan
 Versus
 Federal Board of Revenue

21 DEC 2017

M(L)

REPRESENTATION PREFERRED BY M/S FATIMA ENTERPRISES LTD, MULTAN AGAINST FINDINGS / RECOMMENDATIONS DATED 24.07.2017 PASSED BY THE FTO IN COMPLAINT NO. FTO/MLN/0000052/2017

I am directed to refer to your representation No. NIL, dated 24.08.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 24.08.2017 has been filed by the Complainant-M/s Fatima Enterprises Limited against the findings of the FTO dated 24.07.2017, whereby it has been held that:

"The contention of the Deptt appears to be convincing; Prima facie, the Complainant failed to discharge its tax liability under Section 147 of the Ordinance. As the matter pertains to the determination of tax liability in respect of which remedy of filing appeal was available under Section 127 of the Ordinance, this office has no jurisdiction to interfere into the matter in terms of the provisions of Section 9(2)(b) of the FTO Ordinance, hence the complaint is filed and case file consigned to record".

3. Brief facts of the case are that this complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against the ex parte order dated 28.12.2016 under Section 147(7) of the Income Tax Ordinance, 2001.

4. The Complainant, a private limited company engaged in the business of spinning of textile fibers, was served with order under Section 147(7) of the Ordinance for payment of advance tax amounting to Rs.13.098 million for the first and second quarters of tax year 2017, without providing opportunity of being heard and recovery measures were adopted without issuing demand notice under Section 137(2) of the Ordinance. Issuance of recovery notice under Section 138(2) of the Ordinance was also stated to be contrary to the law. In support, the Complainant cited various judgments of the superior courts particularly 2016 SCMR 1961, 2016 CLC 1931, 2016 CLC 1805, 2015 SCMR 456, 2015 PLD 187, [(2001) 83 Tax 119 (S.C Pak), 2006 PTD 2207, 2011 PLD 365 and Board's Circular No. 3(6) Rev. Bud/2002/03 dated 09.08.2002. The Complainant prayed that the Deptt be directed to withdraw notice issued under Section 138(2) and vacate the order under Section 147(7) of the Ordinance.

5. The complaint was sent for comments to Secretary Revenue Division in terms of Section 10(4) of the FTO Ordinance. In response, the Deptt vide letter No. CCIR/RTO-MN-13487 dated 24.03.2017 challenged the jurisdiction of the FTO as per Section 9(2)(b) of the FTO Ordinance on the ground that the matter relates to the assessment of tax liability and interpretation of law in respect of which appeal lies under the Ordinance. On merits, it was stated that Show Cause Notice dated 28.12.2016 was issued to discharge advance tax liability under Section 147 of the Ordinance which was an opportunity to explain his point of view with regard to nonpayment of advance tax liability. The assessment of advance tax was made on the basis of tax liability declared by the Complainant himself. As the Complainant failed to discharge his liability, recovery proceedings were rightly initiated under Section 147(7)/138(2) of the Ordinance. Thus FTO has issued aforementioned findings.

6. The instant Representation has been filed by the Complainant. The Complainant has argued that the Respondent No. 5-Deputy Commissioner Inland Revenue, E&C Unit-02, Corporate Zone, RTO, Multan issued order of assessment under Section 147(7) of the Income Tax Ordinance, 2001 vide C.No.1272 dated 28.12.2016 to create demand amounting to Rs. 6,549,400/- for each quarter under Section 147(4) of the Income Tax Ordinance, 2001 without given prior notice to provide opportunity of being heard to the Petitioner-the Complainant.

7. The Complainant has stated that in continuation of ex-parte order under Section 147(7) passed by the Respondent No. 5 he issued recovery notice under Section 138(2) of the Income Tax Ordinance, 2001 vide No.DCIR/U-02/RTO/MN/2073 dated 27.02.2017 to deposit the demand tax of Rs. 13,098,800/- by 08.03.2017. He further intends that failing which proceedings may be initiated under these rules to recover the said amount by one or more of the following modes namely:

- a). Attachment and sale of moveable or immovable property;
- b). Appointment of receiver for the management of your movable or immovable property;
- c). Your arrest and detention in prison for a period not exceeding six months.

He further directed that the Complainant to sell, mortgage, charge, issue or otherwise deal any property belonging except with his permission to that effect in writing.

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

RR eDOX Dy. No. 154120-R
 Received in /Ch. Sectt.
 on 21 DEC 2017
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