

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

Federal Board of Revenue
Versus
M/s R.P.S Construction Co, Karachi

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 21.06.2017 PASSED BY THE FTO IN COMPLAINT NO.
172/KHI/TT/2017**

I am directed to refer to your representation No. 4(172)S(TO-I)/2017, dated 22.08.2017 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 Agency—Federal Board of Revenue against the findings of the FTO dated 21.06.2017, whereby it has been held that:

“FBR to-

- (i) Direct the Commissioner-IR to allow credit of tax deducted at source due to rectification order dated 05.05.2017 for the tax year 2006 in terms of Section 221 of the Ordinance, as per law; and
- (ii) Report compliance within 45 days”.

3. Brief facts of the case are that this complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 against the failure of the Deptt to allow credit of balance tax deducted for tax year 2006 amounting to Rs. 7.432 million and pressing recovery under Section 140 of the Income Tax Ordinance, 2001 read with Rule 69 of the Income Tax Rules 2002.

4. The Complainant an AOP engaged in construction business, is registered with the Deptt vide NTN 0674498. According to the AR, the Complainant filed return of income for tax year 2006 under Final Tax Regime (FTR) in terms of Section 115(4) of the Ordinance. He contended that being a Contractor Tax so deducted at the time of payment was final discharge of tax liability for the year. The Deptt, however, amended the assessment for tax year 2006 under Section 122(5A) of the Ordinance vide order dated 04.08.2009 wherein the entire tax deducted from payments at source was disallowed by creating huge tax liability amounting to Rs. 25.234 million. When the Complainant approached with supporting evidence, the Deptt. Rectified the amended assessment under Section 221 of the Ordinance vide order dated 29.04.2010. However, full credit of tax deducted was not given and instead liability of Rs. 11.568 million was created. The Complainant thereafter repeatedly approached the Deptt. with supporting evidence of tax deduction but to no avail. After dragging the matter for almost seven years, the Deptt instead of allowing credit of taxes deducted, served a notice dated 16.01.2017 under Section 140 of the Ordinance on the Chairman, National Highway Authority Islamabad read with Rule 69 of the Rules with a threat to launch prosecution and additional tax proceedings, if tax liability amounting to Rs.25.234 million was not remitted to the government treasury despite the fact that above demand already stood rectified vide order dated 29.04.2010 passed under Section 221 of the Ordinance. He stressed that entire evidence of balance tax deducted duly verified by deducting authorities, has been provided but the Deptt. has failed to delete the unlawful demand.

5. In response to the notice of complaint issued to the Secretary, Revenue Division, the Commissioner-IR, Zone-III, RTO-II, Karachi submitted parawise comments dated 05.05.2017. At the outset preliminary objection of bar of jurisdiction under Section 9(2)(b) of FTO Ordinance was raised. On merit, it was contended that recovery measures in terms of Section 140 of the Ordinance read with Rule 69 of the Rules were initiated as tax demand was outstanding against the Complainant. However, after considering the evidence produced by the Complainant, the order for tax year 2006 has been further rectified under Section 221 vide order dated 05.05.2017. The balance demand for the tax year 2006 amounting to Rs.7.432 million was still recoverable from the Complainant. In the light of above order the recovery notice issued under Section 140 of the Ordinance read with Rule 69 of the Rules has been withdrawn vide letter dated 08.05.2017.

6. The AR argued that certificates of tax deductions for the balance amount of Rs.7.432 million duly verified by the deducting authorities were lying in the relevant file, which the Deptt. has failed to take into account by further rectifying the order. The AR produced the required documents before FTO and contended that the Complainant was prepared to give affidavit on stamp paper regarding veracity of the tax deduction which had already been verified by the deducting authorities. The arguments of both the parties have been given due consideration and record perused. The FTO has issued aforementioned findings.

*Infra
R. also update
in website already
upload on
21/12/17
POF*

*TO-I/ 22/12/17
ASST (TO-I)*

*153504-K
24/12/17
55(TO-I)*

7. The instant Representation has been filed by the Agency. The Agency has taken ground that the findings/ recommendations of the FTO are without jurisdiction since the complaint related to determination of tax liability and stands specifically excluded from the scope of jurisdiction of FTO as laid down in Section 9(2)(b) of the FTO Ordinance, 2000.
8. The Agency has pleaded that the FTO was not justified to entertain the complaint when the remedy of appeal is available to the Complainant before the Commissioner (Appeals) under Section 127 of the Income Tax Ordinance, 2001.
9. The Agency has contended that without prejudice to the above, the findings/ recommendations of the FTO are contrary to facts. The officer had rightly rejected the tax credit on failure of the taxpayer to substantiate his claim and the same was also not verifiable from veritax system of FBR web portal.
10. The Agency has explained that the taxpayer as well as withholding agents failed to produce evidence to the effect that taxes claimed have been deducted at source and the same were duly deposited into head of Income Tax.
11. The Agency has expressed that the credit was disallowed through speaking order after providing proper opportunity of being heard to the taxpayer, but he failed to substantiate his claim.
12. The Agency has narrated that the FTO has directed allowing credit for amount which stands still un-verified from system as well as deducting authorities.
13. The Agency has expressed that non furnishing of challans alongwith certificate is violation of Section 164 of the Income Tax Ordinance, 2001.
14. The Agency has prayed that the President may be to accept the Representation of the Federal Board of Revenue, Islamabad and set aside the findings of the FTO vide Order dated 23.06.2017 in complaint No.FTO-KHL/0000172/2017.
15. On the other hand, the complainant has filed his written comments against the instant representation of FBR on 4.10.2017 and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.
16. After perusal of record and examination of all documents, it has been observed 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.
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. 148/FTO/2017 dated 18.12.2017

Copy for information to:

1. Mr. Mehrumal, M/s R.P.S Construction Co, Office No. 112, 4th Floor, Block-C3, Taj Complex, M.A Jinnah Road, Karachi.
2. Mr. Nasimuddin, Advocate, M/S Nasim Qamar & Co, Office No.210-215, Tahir Plaza, Syedan Tahir Saifuddin Road, Near City court, 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)