

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

FBR, Versus M/s Fatima Medical Centre (Pvt) Ltd, Multan

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD
AGAINST FINDINGS/ RECOMMENDATIONS DATED 14.12.2016 PASSED BY THE FTO IN
COMPLAINT NO. FTO-MLN/0000503/16 AND COMPLAINT NO. FTO-MLN/0000698/16**

I am directed to refer to your representation No. 4(0503)/TO-I/2016 dated 12.01.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 12.01.2017 has been filed by the Agency/FBR against the findings of the FTO dated 14.12.2016, whereby it has been held that:

"Amendment of the assessment during pendency of complaint is violation of the provision of Section 18 of the FOIRA, 2013. There was no requirement of issuance directions by the Ombudsman to stop proceedings.

Chairman FBR is advised to look into the matter and have an enquiry conducted against defaulting officers/officials."

3. The brief facts of the case are that Complaint No.503/2016 has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against issuance of Show Cause Notice (SCN) dated 29.04.2016 under Sections 122(9)/ 122(5)/111 of the Income Tax Ordinance, 2001 (the Ordinance) second complaint (No.698/2016) against the assessment order dated 22.06.2016 for tax year 2010 passed during pendency of the proceedings before this forum, in violation of the provisions of Section 18 of the Federal Ombudsman Institutional Reforms Act, 2013 (FOIR A). The Complainant prayed for withdrawal of impugned notice and the assessment order and also requested to initiate proceedings for contempt under Section 16 and defiance under Section 12 of the FTO Ordinance against the officers/officials having corrupt and improper motives for illegal proceedings against the Complainant. Both the complaints, being inter-related, are disposed of through this combined order.

4. Briefly stated, the Complainant namely M/s Fatima Medical Centre (Pvt) Ltd, Multan received SCN dated 29.04.2016 under Section 122(9) of the Ordinance on 04.05.2016 from the DCIR, Unit01, RTO, Multan stating that as per definite information acquired through investigative audit by the Directorate of intelligence & Investigation (I&I) IR, Multan, the Complainant medical centre was involved in suppression of business income and expenses. The I&I team impounded manual record, computers, main server and other documents from the business premises. Based on the information collected from the premises, Mr. Abid Hussain Gulshan, DCIR, Audit Unit-01, Special Zone the SCN wherein the complainant was required to submit reply/explanation by 13.05.2016 in respect of suppressed income. In response, application for adjournment was filed which was allowed, but instead of furnishing explanation, complaint No.503/2016 was filed and the DCIR was informed about it vide AR's letter dated 26.05.2016 stating that no court or authority can assume jurisdiction in respect of matters pending with Ombudsman nor any authority or court shall assume jurisdiction in respect of any matter pending with or decided by an Ombudsman. Any violation would be termed as contempt under Section 16 and defiance Under Section 12 of the FTO Ordinance. This explanation was found unsatisfactory and the assessment order was passed on 22.6.2016, income assessed at Rs.2.198 million and tax demand raised at Rs.0.796 million. Being aggrieved, the Complainant filed another complaint No.698/2016 contesting the action of framing assessment during pendency of the proceedings before this office. According to the Complainant, the Deptt violated the provisions of Section 18 of

28/3/17

28/3/17

FOIRA 2013 as such, liable for contempt under Section 16(1)(c) of the PTO Ordinance read with Section 12 of FOIRA 2013 and Contempt of Court Ordinance, 2003 (V of 2003).

5. The complaints were sent to the Secretary Revenue Division in terms of Section 10(4) of the Federal Tax Ombudsman Ordinance, 2000. In response, the Chief Commissioner IR, RTO, Multan vide letter No. CCIR/RTO-MN/16494 dated 20.06.2016 forwarded comments of the Commissioner IR, Special Zone, Multan bearing No. CIR-SZ/RTO-MN/2015-16/5396 dated 17.06.2016 in C.No.503 /2016 and vide letter No. CCIR/RTO-MN/2266 dated 24.06.2016 in C.No.698/2016. The comments received were provided to the Complainant who filed rejoinder. The Deptt defended vide letters No.DIR/I&I-IR/MN/146 dated 09.08.2016 and No.DIR/I&I-IR/MN/2016/164 dated 16.08.2016.

6. The Deptt raised preliminary objection that the Federal Tax Ombudsman had no jurisdiction to investigate in terms of the provisions of Section 9(2)(b) of the FTO Ordinance, 2000 as the matter relates to the assessment of income and liability of tax in respect of which remedy of filing appeal is available under the relevant legislation. On merits, the Deptt defended show cause notice as well as the order of amendment stating that notice was issued on the basis of information provided by the Directorate of I & I, Multan. When confronted, the Directorate stated that business premises of another taxpayer namely M/s City Hospital (Pvt) Ltd, Multan were visited in pursuance of Section 175 of the Ordinance and during the process, it was revealed that some of the record pertained to the Complainant. This was confirmed through decoding of data by Punjab Forensic Science Agency (PFSA). The data was compared with the assessment record of the Complainant and noticed certain discrepancies in respect of receipts and expenditure which were passed on to the concerned officer for taking consequential action. However, no proceedings were underway against the Complainant till impounding of record. It was only after comparison of the data retrieved from the computers and its comparison with the declared version that the Directorate came to know about the discrepancies.

7. On the issue of framing assessment during the pendency of proceeding before FTO office, the Deptt was of the view that as no stay order/directions to stop the proceedings were issued by the Ombudsman and as the case was going to be barred by time, the assessment was amended on 22.06.2016 is before the close of financial year ending on 30.06.2016.

8. The AR raised objections on the action taken by the Directorate on the ground that no proceedings in respect of the Complainant were pending before them, therefore, no action could be initiated against the Complainant on the basis of record retrieved from the business premises of another taxpayer namely M/s City Hospital (Pvt) Ltd, Multan. Further stated that the Complainant had been doing business in the capacity of a private limited company having independent business premises and accounting system. The team of I&I neither visited his premises nor looked into the record maintained by the Complainant. The record if any, retrieved from the business premises of another taxpayer, should have been confronted to the Complainant by the Directorate and proper resumption memo should also have been issued. This was not done.

9. According to the AR, information received from Directorate does not constitutes "definite information gathered through conducting audit" as no audit under Section 177 of the Ordinance was under process and only action under Section 175 of the Ordinance was taken. The issuance of show cause notice without bringing definite information on record was of no legal effect. He referred to the case law as to what constitutes definite information.

