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

Federal Board of Revenue  
Versus  
M/s Interloop Limited, Faisalabad

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REPRESENTATION PREFERRED BY FBR AGAINST FINDINGS / RECOMMENDATIONS  
DATED 23.9.2015 PASSED BY THE FTO REVIEW PETITION NO.21/2015 IN COMPLAINT NO.  
10 FSD/TT(70)/830/2014

I am directed to refer to your representation No.4(830)TO-I/2014 dated 21<sup>st</sup> Oct 2015 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 21.10.2015 has been filed by the Agency/FBR against findings in Review dated 23.09.2015, whereby the following recommendations have been made:-

"FBR to direct the Chief Commissioner to-

- (i) implement refund order dated 28.6.2014, as per law;
- (ii) identify the officer(s)/official(s) responsible for misleading the FTO and take action under the relevant Rules after providing them opportunity of hearing; and
- (iii) report compliance within 30 days."

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*Handwritten date: 1/6/16*

3. Brief facts of the case are that the complainant - Mr. Muhammad Maqsood, Director Finance, M/s Interloop Limited, Faisalabad approached FTO on 19.06.2014 for delay in settlement of refund claims amounting to Rs.136.688 million for Tax Year 2013 stating that refund application was filed on 26.03.2014, but the same has not been processed despite reminder. It was also contended that the said refund claim became due as a result of reduction in tax liability on account of tax credit w/s 65B of the Income Tax Ordinance 2001. The Agency replied that the complainant filed return declaring Final Tax Regime (FTR) receipts and that Section 65B of the Ordinance provides for credit = 10% of the investment and that the matter involves interpretation of law as to whether the credit of tax w/s 65B could be allowed against tax already paid/deposited. The Agency has also taken the stance in terms of Section 9(2)(b) of the FTO Ordinance, 2000 that the jurisdiction of FTO is specifically excluded to investigate the matter like one in hand. It was further contended that the claim of tax credit was subject to verification of purchase and installation of machinery and that such credit can be carried forward to next year but not refundable. The Agency also stated that the verification processed was being carried out and the refund due if any would be credited accept w/s 65B of the Ordinance.

4. The FTO after perusal of record observed that the clarifications issued by the Agency does not mention that the excess tax credit would be refunded to the tax payer and that such credit can be carried forward but not refunded and rejected the complaint. The complainant filed review petition reiterating its stance earlier taken in the complaint and contended that its case does not fall within provision of Section 65B(5) of the Ordinance and that the whole amount of tax credit was adjustable against payable tax and that there was no excess credit available to be carried forward in the next year. It was also contended that refund was not claimed on account of excess credit but the same was claimed on account of excess payment of Rs.135,688,202/- by the complainant company against liability of Rs.50,015,092/- after allowing the tax credit of Rs.128,158,226/- against chargeable tax at Rs.178,173,318/- and sought review of closure findings of the said review petition of the complainant which was contested by the Agency while supporting closure findings.

P.T.O.

Received in Chief (Legal) Office  
on 19-06-18

*Handwritten notes:*  
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Forth & also  
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FBR's website  
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5. The FTO after hearing the parties observed that the perusal of record revealed same material facts which were not brought to the notice during the complaint proceedings. The FTO also observed that a refund order was passed by the department after due verification of tax credit and tax payment but refund had not been issued despite specific amount declared as refundable to the complainant, made the aforementioned recommendations.

6. The Agency in its representation has taken the stance that the issue involved in the original complaint was tax credit u/s 65B of the Income Tax Ordinance and thus the matter related to the interpretation of law which is not within the jurisdiction of the FTO in light of Section 9(2)(b) of FTO Ordinance 2000. That FTO vide his findings dated 13.8.2014 in complaint No.273-LHR/TT (11)/654/2014 has declined to exercise the jurisdiction in the similar matter. That the matter being appealable was also not to be investigated by the FTO.

7. 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 (IT), 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. In the circumstances the impugned findings of FTO are not sustainable. Consequently the representation of the Agency is liable to be accepted.

8. Accordingly, the President has been pleased to accept the Agency's representation and set aside the impugned findings of the FTO.

  
Zulfiqar Hussain Awan  
Director (Legal-II)

✓ The Chief (Legal),  
Federal Board of Revenue,  
Islamabad

No.76/FTO/2015 dated 30.5.2016

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
2. M/s Interloop Limited, P - 187, Al-Sadiq Plaza, Railway road, Faisalabad
3. Shahid Bashir, Advocate/Consultant, Akhtar Ali & Associates, Tax and Corporate Lawyers, 3<sup>rd</sup> floor, LCCI building, near China Chowk, Lahore.
4. Director to Secretary to the President.
5. Master file.

Zulfiqar Hussain Awan  
Director (Legal-II)

4  
