

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

Federal Board of Revenue
Versus
Mr. Saif-ur-Rehman, Lahore

SUB: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 25.04.2017 PASSED BY THE FTO IN COMPLAINT NO. FTO-ONL/0000044/2017

I am directed to refer to your representation No. 4(044)S(TO-I)/2017 dated 18.05.2017 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 18.05.2017 has been filed by the FBR/ Agency against the findings of the FTO dated 25.04.2017, whereby it has been held that:

"FBR to direct the:-

- (i) Chief Commissioner, RTO-II, Lahore to register the Complainant immediately; and
- (ii) Report compliance within 45 days."

3. The Brief facts of the case are that the complaint has been filed under Section 10(1) of Federal Tax Ombudsman Ordinance, 2000 (the Ordinance) against failure of the deptt to register of the Complainant under Sales Tax Act, 1990 (the Act) on the ground that the Complainant was not using electricity from commercial meter.

4. In terms of Section 10(4) of the Ordinance, the complaint was sent to the Secretary, Revenue Division, and the Chief Commissioner-IR, RTO-II, Lahore for comments. In response, the Commissioner-IR, Zone-II, RTO-II, Lahore submitted comments, inter-alia intimating that the Complainant was not eligible for sales tax registration as he did not have any commercial business premises. Moreover, no commercial electricity meter was installed in the said property.

5. During hearing the AR contended that in the Sales Tax Act, 1990 or the Sales Tax Rules, 2006 (the Rules) there is no provision regarding installation of a commercial electricity meter and location of premises in a commercial area. The AR provided a copy of the electricity bill of one Mst. Saadia Tehseen, wife of Tehseen Khakwan, resident of 156-E-2. Wapda Town, Lahore, where M/s Ibrahim & Sons (STRN 3277876131213) had been registered by the RTO-II, Lahore as wholesaler, exporter and importer through a domestic electricity meter was installed in a residential house.

6. The DR was asked to clarify as to why the deptt was insisting on the installation of a commercial meter, if it is not a mandatory legal requirement, and also provide the rationale behind registering M/s Ibrahim & Sons on a domestic meter installed in a house being used as a residence. The DR furnished a copy of instructions issued by the FBR on 18.08.2015 which shows that commercial electricity reference number is required for manufacturers while commercial connection of electricity for traders and wholesalers etc. These instructions appear outdated and against Rule 5(i)4(b) of the Rules which require installation of industrial electricity or gas meters by the manufacturers.

7. In view of supra, it is evident that deptt is discriminating against the Complainant by refusing him the sales tax registration although in the identical circumstances it has already granted sales tax registration to M/s Ibrahim & sons. Thus FTO has issued aforementioned findings.

8. The instant Representation has been filed by the FBR/ Agency. The Agency has taken ground that Hon'able FTO was not justified to intervene in the matter as the decision of rejection of registration application was made with conscious application of mind and based on merit. That in the presence of express sales tax charging provisions (S.R.O509(I)/2013 dated 12.06.2013 and S.R.O 510(I)2013 dated 12.06.2013), the Hon'able FTO was not justified to hold that the law of sales registration does not provide for requiring a commercial premises or commercial electricity meter as a requirement for sales tax registration.

9. The Agency has pointed out that in the presence of express income tax withholding provisions in respect of commercial electricity consumes vide Section 235 of the Income Tax Ordinance, 2001, the Hon'able FTO was not justified to hold that the law of sales registration does not provide for requiring a commercial premises or commercial electricity meter as a requirement for sales tax registration.

10. The Agency has contended that the Hon'able FTO has erred in ignoring that the rent agreement signed with the landlord does not provide to carry out commercial activity in the premises taken on lease for residential purpose.

11. The Agency has pleaded that the Hon'able FTO has erred in ignoring that the taxpayer is in breach of law of taxation in terms of not paying taxes on electricity bills and it is the inherent duty of the Commissioner to ensure that taxes are being paid properly and there is no arrangement existing to commit deliberate breach of law.

12. The Agency/FBR has submitted that the impugned decision/ findings dated 26.04.2017 in the complaint No.FTO/ONL/0000044/2017 with consequent recommendations and decision/ findings may be set aside as these fall beyond that jurisdiction, function and powers of the Hon'ble FTO in terms of section 9(2)(b) of the Federal Tax Ombudsman Ordinance, 2000.

09 AUG 2017
M(2)

Chief(L-I)
S(Li-SC)
SS(Li-SC)
SS(T-I)
SS(T-II)

Chief(L-II)
S(Li-HC)
SS(L-A&A)

Chief(L-III)
S(Li-ET)
S(Li-ID)
S(Li-S)

FBR eDOX Dy. No. 18030-R
Received in /Ch. Sectl.
on 09 AUG 2017
ML/10-8-17

FBR e-Dox No. 98030
Received in Chief (Legal) Office
on 11/8/17

13. On the other hand, the complainant has filed his comments against the instant representation of FBR on 9.6.2017 through Amir Ali Sheikh, Advocate High Court and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.

14. 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.

15. 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.

16. 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.

17. 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.

18. Accordingly, the President has been pleased to accept the instant representation of Agency-FBR and to set aside the impugned recommendations/findings of FTO.



(Zulfiqar Hussain Awan)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.105/FTO/2017 dated 07.08.2017

Copy for information to:

1. Mr. Siaf-ur-Rehman, Prop: M/s Ansari Corporation, SD-475, Askari-9, Zarar Shaheed Road, Lahore.
2. Mr. Amir Ali Sheikh, Advocate, Suit No.417,4th floor, Lank Mark Plaza, Jail Road, Gulberg-V, Lahore.
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)