

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

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Federal Board of Revenue

Versus

Ms. Naheed Shamim Nuzhat, Multan

19 JUN 2018

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 21.02.2018 PASSED BY THE FTO IN COMPLAINT NO. 816/MLN/IT/2017**

I am directed to refer to your representation No. 4(816)S(TO-I)/2017, dated 16.03.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 16.03.2018 has been filed by the FBR/Agency, against the findings of the FTO dated 21.02.2018, whereby it has been held that:

"FBR to-

- i. Direct the Commissioner Corporate Zone, RTO, Multan to give appeal effect to the order of the CIR (Appeals) and dispose of the complainant's claim of refund as per law; 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 the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against non-payment of refund amounting to Rs. 0.175 million consequent upon appellate order. Precisely, the Complainant enjoying profit on investment, failed to file return of income for Tax Year 2010. Notice under section 114(4) of the Income Tax Ordinance, 2001 (the Ordinance) was issued which remained un-complied with. Consequently, provision assessment under Section 122C of the ordinance was framed on 29.06.2015 at a net income of Rs. 1.000 million. On 23.01.2017, the department attached the bank account of the Complainant and withdrew tax demand created at Rs. 0.175 million. Being aggrieved, the Complainant filed an appeal on 30.01.2017 whereby the CIR (Appeals), Multan vide his order No. 835 dated 03.03.2017 disposed of the complaint with the observation that "the provision assessment is not sustainable in the eye of law. The department is directed to proceed according to law after providing reasonable opportunity of being heard to the appellant. Consequently, upon the appellate order the tax liability being Nil, the Complainant filed an application for refund of Rs. 0.175 million followed by 4 reminders on 27.09.2017, 10.10.2017, 12.10.2017 and 21.10.2017 but the claim of refund was not settled.

4. The complaint was sent for comments to the Secretary Revenue Division for departmental reply/comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsman Institutional Reforms act, 2013. In response, thereto, the department submitted its comments vide letter No. 6707 dated 05.12.2017. Preliminary objection was raised with regard to the jurisdiction of this office in terms of Section 9(2)(b) of the FTO Ordinance, on the plea that the issue relates to assessment of income and determination of tax liability and interpretation of law, therefore, the complaint is beyond the scope of jurisdiction of this forum, as the issue is appealable under the ordinance. It was further stated that the Complainant had filed the complaint before approaching higher authorities or filing any representation which is violation of procedure for filing of complaint as laid down in rule 3 of the Federal Tax Ombudsman Investigation & Disposal of Complaints Regulation, 2001.

5. On merits, it was stated that the Commissioner, Inland Revenue (appeals) had no jurisdiction for hearing against the order passed by the department under Section 122C of the Ordinance as envisaged in the Ordinance. Therefore, the order of annulment was void ab-initio and inoperative, in view of sub-section (1) of Section 127 of the Ordinance.

6. Both the parties heard and record perused by FTO. Thus, FTO has issued aforementioned findings.

7. The instant representation has been made by the FBR. The Agency has taken ground that the instant complaint is prima-facie lodged to take effect of the Commissioner-IR (Appeals), Multan's Order. Commissioner-IR (Appeals) has no jurisdiction over the cases wherein order passed by the department u/s 122C of the Income Tax Ordinance, 2001 u/s 127(1) ibid. The taxpayer filed income tax return for Tax Year 2010 after expiry of 45 days of receipts of order u/s 122C. The ordinance states under Sub-Section (2) of Section 122C.

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FBR eDOX Dy. No. 16111-K  
Received in /Ch. Sectt.  
on 19 JUN 2018

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