

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

M/s AQR Traders Regd, Sialkot
Versus
Federal Board of Revenue

REPRESENTATION PREFERRED BY M/S AQR TRADERS REGD, SIALKOT AGAINST FINDINGS /RECOMMENDATIONS DATED 22.3.2018 PASSED BY THE FTO IN COMPLAINT NO.08/GWL/IT/(08)/24/2018

I am directed to refer to your representation dated 17.04.2018 on the above subject and to say that the President has been pleased to pass the following orders:

2. This representation dated 17.04.2018 has been filed by the Complainant M/s AQR Traders against the findings of the FTO dated 22.03.2018 where it has been held that:-

“This complaint was registered on 05.01.2018 whereas, the deptt: has filed second appeal before the ATIR against the order of CIR (Appeals) on 28.06.2016 which is still pending adjudication. The complaint is as such barred u/s 9(2)(a) of the FTO Ordinance, which stands dismissed. The case file be consigned to record.”

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-issuance of the income tax refund amounting to Rs.3.318 million for tax year 2009.

4. Precisely, the Complainant, an individual, derives income from export business. The return of income for tax year 2009 was e-filed declaring export sales at Rs. 1.359 million and tax deducted thereon at Rs. 0.318 million. Based on an information that the complainant made investment in purchase of immovable property for a consideration of Rs. 11.500 million, during the period relevant to the tax year 2009, proceedings for amendment of the deemed assessment were initiated. During the proceedings, the assessing officer observed that the complainant was also maintaining a bank account No. 4892-8 with National Bank of Pakistan, City Branch, Sialkot, which had not been disclosed in the return of income and by doing so concealed bank deposits of Rs. 12.000 million. The complainant failed to explain the source of these bank deposits and so the assessment was amended under section 122(1) of the Income Tax Ordinance, 2000 (the Ordinance) as under:-

Imputable Income	Rs. 1,272,264/-
Addition on account of concealed deposits u/s 111(1)(b) of the Income Tax Ordinance 2001	Rs. 12,000,000/-
Total Taxable Income	Rs. 13,272,264/-
Tax on above	Rs. 3,318,066/-

5. Against the above treatment, the complainant filed appeal before the CIR (Appeals), Sialkot who vide Order No. CIR(A)/IT/766 dated 23.02.2016 annulled the assessment being barred by time. Consequently, the tax demand of Rs.33.18 million recovered by the Deptt, became refundable. The complainant vide letters dated 18.10.2017, 25.10.2017, 08.11.2017 and 21.11.2017 applied for refund, but the same was not issued, hence this complaint.

6. When confronted in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the FOIR Act, 2013, the deptt submitted para-wise comments vide FBR letter No. C. No. 4(24)S(TO-I)/2018 dated 12.02.2018 stating that the deptt has filed 2nd appeal before the ATIR on 28.06.2016, which is pending for adjudication. On facts, it was stated that the complainant failed to explain the source of bank deposit, hence an addition of Rs.12.000 million was made under the law.

7. Both the parties heard and record perused. Thus FTO has issued aforementioned findings.

8. The instant representation has been made by the Complainant. The complainant has taken ground that complaint bearing No. 08/GWL/IT(08) in the case of our client AQR Traders Regd. was filed before the Federal Tax Ombudsman, Islamabad, which has been dismissed vide order dated 22.03.2018 without affording sufficient opportunity of being heard.

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9. The complainant has underscored that observation of the FTO that status of the case of the complainant is "sub-judic" at the time of filing of complaint is absolutely irrelevant, unjustified, baseless as well as illegal, as learned CIR(A) has annulled the assessment order and vacated the entire demand and at the material time there stands no tax demand against the complainant and as such the entire tax recovered by the department was become refundable after order of CIR(A).

10. The complainant has underlined that department was under legal obligation to give appeal effect in the case of the complainant within 2-months of the appellate order in terms of sub-section (4) of section 124 of the Income Tax Ordinance 2001, as direct relief was provided to the complainant by the CIR(A) but department has failed to discharge his legal obligation by having appeal effect and has also failed to pass order u/s 170(4) of the Income Tax Ordinance 2001 for issuance of refund of Rs.3,318,066/-, which was recovered by the department.

11. The complainant has expressed that matter, which is sun-judice before the ATIR is only to "probe of investment" and "not of determination of refund of tax", as at present there stands no tax demand against the complainant, hence complainant is rightful to ask for issuance of refund of tax recovered from him, as there has been no provision whatsoever is available in the Income Tax Ordinance 2001 to hold the refund due to the complainant and FTO has not even mentioned and such provision, which could debar the department from issuance of refund. That if verdict of the ATIR is announced against the complainant, the department may again recover the demand from the complainant.

12. The complainant has prayed that order of the FTO may be vacated and complaint of the taxpayer may be accepted and department be directed to issue the refund of the complainant at an earliest.

13. On the other hand, FBR has pointed out that the taxpayer, an Individual, derives income from manufacturing/export of sports wares. Return of total income / statement of final taxation for tax year 2009 was e-filed declaring export sales at Rs.1,359,536/- and tax deducted thereon under section 154 of the Income Tax Ordinance 2001 at Rs.318,066/-. Assessment proceedings in this case were initiated on the basis of information received from the Sub-Registrar, Sialkot that the taxpayer has made investment in purchase of immovable property for a consideration of Rs. 11,500,000/- during the period relevant to tax year 2009, which apparently found not commensuration with income declared by the taxpayer. During assessment proceedings, it was observed that taxpayer is maintaining bank account No.4892-8 with National Bank of Pakistan, City Branch, Sialkot which was not disclosed and thus concealed deposits in the said account at Rs.12,000,000/-. The taxpayer failed to explain the sources of bank deposits and assessment was finalized under section 122(1) of the Income Tax Ordinance, 2001 as under:-

Imputable Income	Rs. 1,272,264/-
Addition on account of concealed deposits u/s 111(1)(b) of the Income Tax Ordinance 2001	Rs. 12,000,000/-
Total Taxable Income	Rs. 13,272,264/-
Tax on above	Rs. 3,318,066/-

14. The Agency has stated that in appeal, the learned Commissioner IR (Appeals) vide order No.CIR(A)/IT/766 dated 23.2.2016 annulled the assessment being barred by time. The learned Commissioner Inland Revenue (Appeals) annulled the assessment on technical grounds and facts of the case regarding concealment of income/deposits in the bank were not discussed. The department has filed second appeal before Honourable Appellate Tribunal Inland Revenue Lahore.

15. The petitioner filed complaint before Honourable Federal Tax Ombudsman for issuance of refund of the amount of tax charged and recovered at Rs.3,318,066/-. The Honourable FTO vide order dated 22.03.2018 dismissed the complaint of the taxpayer being ultra vires to section 9(2)(a) of the FTO Ordinance 2000.

16. The Agency has prayed that the findings/recommendations of the FTO issued in this case being strictly in accordance with law in terms of Section 9(2)(b) of the Establishment of the Office of FTO Ordinance 2000 may be maintained.

Analysis/Conclusion

17. After perusal of record, examination of all documents, it has been noted that Section 9(2)(a) of the FTO Ordinance 2000 provides that FTO shall not have jurisdiction to investigate or inquire into matters which are

subjudice before a court of competent jurisdiction or tribunal or board of authority on the date of the receipt of a complaint, reference or motion by him.

18. In terms of Section 9(2)(b) of the FTO Ordinance 2000, the FTO has no jurisdiction to investigate or inquire into the matters which relate to the assessment of income, determination of liability of tax, interpretation of law, rules and regulations relating to the said assessment/ determination in respect of which legal remedies of an appeal, review or revision are available under the relevant legislation.

19. 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. Thus the impugned findings are sustainable and the representation is liable to be rejected.

20. 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 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.

21. This representation has been filed by complainant repeating the contents of the pleadings already made before the learned FTO. Nothing turns on the same as it fails to answer the reasoning of learned FTO and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the FTO. Undoubtedly FTO's decision is based on sound reasoning and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings/recommendations do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability.

22. Accordingly, the President has been pleased to reject the instant representation of complainant namely M/s AQR Traders (Regd) and the impugned recommendations/findings of FTO are upheld.


Zulfiqar Hussain Awan)
Director General (Legal)

M/s AQR Traders Regd,
Nasir Road, Sialkot

No.18/FTO/2018 dated 13.06.2018

Copy for information to:

1. The Chairman, Federal Board of Revenue, Islamabad.
- ✓ 2. The Chief (Legal), Federal Board of Revenue, Islamabad.
3. Mr. Muhammad Asim Halim, Commissioner Inland Revenue, Sialkot Zone, RTO, Sialkot.
4. Mr. Muhammad Akram Raza, Counsel, Zafar & Associates Advocates & Tax Consultants, 299-Shah Faisal Road, Model Town, Sialkot.
5. The Registrar, Federal Tax Ombudsman Secretariat, Islamabad,
6. Director to Secretary to the President.
7. Master file.


(Zulfiqar Hussain Awan)
Director General (Legal)