

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

Federal Board of Revenue
 Versus
 Mr. Jalal-ud-Din, Peshawar

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 21.02.2018 PASSED BY THE FTO IN COMPLAINT NO.
0014/PWR/IT/2018

I am directed to refer to your representation No. 4(14)S(TO-I)/2017, dated 19.03.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 19.03.2018 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-IR Peshawar Zone to revisit the order dated 30.09.2015 in terms of Section 122A of the Ordinance and decide the case afresh after affording proper opportunity of hearing to the Complainant in a transparent manner, as per law;**
- 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 rejection of the Complainant's request for revision in terms of Section 122A of the Income Tax Ordinance, 2001 (the Ordinance) without passing proper speaking order. The Complainant an individual resident of Bajaur Tribal Area, FATA showing no taxable source of income. According to the AR, in the year 2014, the Complainant purchased a property in Hayatabad, Peshawar. The department without serving on the Complainant any notice made provisional assessment for Tax Year 2014 vide order dated 30.09.2015, whereby huge tax demand of Rs. 8.322 million was raised. Even the above order was not served on the Complainant. It was only after the notice under Section 138(1) of the Ordinance was sent on the Hayatabad address on 10.11.2016, the Complainant came to know about this fact and he then obtained attested copy of the same. The Complainant thereafter filed return of Income Tax Year 2014 on 13.12.2016. Though complaint of Section 122C (2) of the Ordinance was made within the stipulated time, the department failed to withdraw the tax demand. The Complainant accordingly filed appeal in terms of Section 127 of the Ordinance. The Commissioner-IR (CIR) (Appeals) Peshawar disposed of appeal vide order dated 11.07.2017 holding:

“That the appellant applied for attested copy of assessment order and demand notice on 10.11.2016 and filed the required documents within the stipulated period of 45 days alongwith supporting evidence. That the assessing officer also verified that financial position of the appellant from the Political Agent Bajaur Agency but did not consider the same properly.”

These arguments of AR merit consideration, but as already stated that undersigned is barred from entertaining the said appeal it would be both in the fitness of things and in the interest of justice and fair-play to refer the case to the Zonal CIR Peshawar for the redressal of the grievance of the taxpayer, in case he so desires, as prima facie, his grievance seems to be genuine. The appellant is advised to approach the said office in this regard.”

4. The Complainant accordingly filed application on 05.10.2017, for revision in terms of Section 122A of the Ordinance. The AR contended that instead of passing an appropriate order, the CIR Peshawar Zone RTO, Peshawar vide letter dated 09.10.2017 informed the Complainant that his request for revision cannot be accepted and was asked to file 2nd appeal against CIR(Appeals) order.

5. The Complainant was referred to 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. The comments was received through Chief Commissioner FTO, Peshawar vide C. No. CCIR/RTO/1052 dated 17.01.2018. It was contended that notices and order under Section 122C of the Ordinance were duly served on the Complainant through Registered Post on his Hayatabad, Peshawar's address. Since reply as well as return for Tax Year 2014 was submitted beyond the period of 45 days of the service of order, therefore, the order passed under Section 122C of the Ordinance attained finality. It was prayed that as this forum

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