

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

Federal Board of Revenue
 Versus
 Mr. Muhammad Sher Khan, Swat

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 15.03.2018 PASSED BY THE FTO IN COMPLAINT NO. 0149,
0150, & 0151/PWR/IT/2018

I am directed to refer to your representation No. 4(234)S(TO-I)/2018, dated 11.04.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 11.04.2018 has been filed by the Agency-FBR against the findings of the FTO dated 15.03.2018 whereby it has been held:

“FBR to direct:-

- (i) Direct the Commissioner-IR Mardan to process and settle refund for Tax Years 2011 to 2013, as per law; and
 (ii) Report compliance within 45 days.”

3. Brief facts of the case are that these identical complaints have been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against Regional Tax Office (RTO), Peshawar on account of failure of settle refund for Tax Years 2011 to 2013. All these complaints having identical issues are disposed of through single consolidated findings.

4. The Complainant, an individual, derives income from franchise of M/s Telenor Pakistan (Pvt) Ltd located at Timargarah which falls in the Provincially Administered Tribal Areas (PATA). According to the AR, the PATA is exempt from tax under the provisions of Article 247 of the Constitution of Islamic Republic of Pakistan, 1973. However, as the tax was deducted under Section 336 of the Income Tax Ordinance, 2001 (the Ordinance), the Complainant filed returns for Tax Years 2011, 2012 and 2013 under Section 114(1) of the Income Tax Ordinance, 2001 and claimed amounting to Rs.3.133 million, Rs. 3.350 million and Rs. 4.659 as refund. He contended that refund applications were not required to be filed as held by this Forum in the cases cited as 2014 PTD 1554=110 TAX 15 and 2006 PTD 1580=91 TAX 305. Notwithstanding above, the Complainant also e-filed separate applications for refund for Tax Years 2011, 2012 and 2013 alongwith required copies of tax deduction certificates but the Department has failed to issue due refund.

5. The complaints were forwarded to the Secretary, Revenue Division, Islamabad for departmental reply/ comments in terms of Section 10(4) of the FTO Ordinance, 2000 read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013. In response thereto, the Chief Commissioner-IR, RTO, Peshawar submitted parawise comments vide letters C.No.537 dated 19.02.2018. It was contended that refund for Tax Years 2011 to 2013 could not be processed as refund applications and evidence of tax deduction had not been provided by the Complainant. It was averred that on production/ perusal of relevant documents, refund due for Tax Years 2011, 2012 and 2013 would be issued, as per law.

6. During hearing, the DR contended that as the Mardan Zone has recently been created, the case record of the Complainant has not yet been received properly. The AR reiterated that inability of the Department for handing over the record to Zone was not a fault of the Complainant for which unlawful delay of settling refund could be justified. Moreover, though filing of refund applications was not mandatory under the statute as held in the case laws cited above, yet the Complainant submitted refund applications and repeatedly sent reminders for issuance of refund, but in vain. In order to facilitate the Department, the AR handed over returns for Tax Years 2011 to 2013, a set of CPRs and copies of the refund applications to the DR with the assurance that more documents, if required, would also be provided within couple of days. The DR assured that after verification process is completed, orders for Tax Years 2011 to 2013 under Section 170(4) of the Ordinance would be passed and refund due issued, as per law. Both the parties have been heard and available record perused. Thus, FTO has issued aforementioned findings.

7. Hearing of the case was held on 30.05.2018. Mr. Muhammad Alam Deputy Commissioner-IR has represented the FBR. On the other hand, Mr. Gawhar Ayub Authorized Representative for the complainant has appeared for the hearing on the particular issue.

8. The instant Representation has been made by the FBR. The Agency has taken ground that the FTO has got no jurisdiction over the case of the Complainant/ Respondent as the FTO Ordinance, 2000 has not been extended to non-taxable area of FATA & PATA within the meaning of Article 247 of the Constitution of Islamic Republic of Pakistan.

9. The Agency has pointed out that claim of the Respondent is erroneous as income/ commission earned by the taxpayer, has been generated outside PATA i.e. in the taxable territory of Pakistan. Thus, receiving payment on

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