

**PRESIDENT'S SECRETARIAT (PUBLIC)  
AIWAN-E-SADR, ISLAMABAD  
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Federal Board of Revenue  
Versus  
Mr. Sajjad Ahmed, Haroonabad

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS  
/ RECOMMENDATIONS DATED 17.08.2017 PASSED BY THE FTO IN COMPLAINT NO.  
FTO-MLN/0000093/2017**

I am directed to refer to your representation No. 4(093)TO-I/2017, dated 14.09.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 14.09.2017 has been filed by the Agency-FBR against the findings of the FTO dated 17.08.2017 whereby it has been held:

"FBR to-

(i) Direct the concerned CIR to settle refund/ compensation due expeditiously; and

(ii) Report compliance within 45 days".

3. Brief facts of the case are that this complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against non issuance of refund. The orders under Sections 161/205 of Income Tax Ordinance, 2001 were passed as under:

Tax Year	Date of Order	Demand raised
2011	13.06.2016	730,427
2012	13.06.2016	2,086,527
2013	18.03.2016	2,640,460
2014	08.08.2016	1,616,400
2015	13.06.2016	4,348,256

4. Statedly, the Deptt illegally recovered an amount of Rs. 9.132 million through attachment of bank account by invoking the provisions of Section 140(1) of the Ordinance. Aggrieved, the Complainant filed appeal before CIR(Appeals) Bahawalpur who vide orders in appeal No. 28, 29, 30, 130 & 633 dated 16.01.2017 annulled the assessments with directions to the Deptt to refund the amount withdrawn from banks. The Complainant filed refund application on 07.02.2017 followed by Representation to the CIR and CCIR on 18.02.2017 and 19.04.2017 but the refund was not issued. According to the Complainant attachment of bank account without show cause notice under Section 138(1) of the Ordinance and withdrawal of amount before expiry of the date of filing of appeal was tantamount to maladministration in terms of Section 2(3)(i), (ii) & (iii) of FTO Ordinance. Further contended that the delay in issuance of refund also create right to receive compensation under Section 171 of the Ordinance.

5. The complaint was sent for comments to the Secretary Revenue Division in terms of Section 10(4) of the FTO Ordinance. In response, the Deptt vide comments dated 17.05.2017 submitted that second appeal has been filed before the ATIR and so the matter is *subjudice* before the Tribunal. Under the circumstances, the complaint may be dismissed. On merits, it was stated that the amount was withdrawn from banks after fulfilling all legal formalities by issuing notice under Section 138 vide document No. 314021-1 dated 17.06.2016 through IRIS, which was not responded and so the provisions of Section 140 of the Ordinance were invoked which empower the DCIR to recover outstanding tax. Further stated that the Complainant filed manual refund application whereas the same was required to be filed on line. Both the parties heard and record perused by the FTO. Thus, FTO has issued aforementioned findings.

6. Hearing of the case was held on 20.12.2017. Mr. Irfan Rehmani, Advocate High Court has represented the FBR. On the other hand, Mr. Tajammal Hussain Adovcate has appeared for the hearing on behalf of the Complainant namely Sajjad Ahmed on the particular issue.

7. The instant Representation has been filed by the Agency-FBR. The Counsel of the Agency has stated that the taxpayer, an individual, derived income from cotton ginning at Haroonabad. The taxpayer falls under the ambit of the prescribed persons for the purpose of Sections 153 and 233 of the Income Tax Ordinance, 2001 and was required to deduct tax on gross amount of payment for purchases made during the period 2011 to 2015 and deposit the same in to the Government Treasury but the taxpayer committed the default of non deduction of tax. A Show Cause Notice was issued but no explanation was offered by taxpayer. Consequently order under Section 161/205 of the ITO, 2001 was passed creating tax liability for the tax years under consideration as follows:

POF  
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9/1/18  
ASST

06 JAN 2018  
06 JAN 2018

