

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

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Federal Board of Revenue  
Versus  
Mr. Muhammad Iqbal, Mianwali

21 DEC 2017

M/H

**REPRESENTATION REFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 31.08.2017 PASSED BY THE FTO IN COMPLAINT NO. FTO-LHR/0000260/2017**

I am directed to refer to your representation No. 4(260)S(TO-I)/2017, dated 28.09.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 28.09.2017 has been filed by the Agency-FBR against the findings of the FTO dated 31.08.2017 whereby it has been held:

"It was the obligation of the Deptt to complete the process of verification within 30 days of the receipt of refund application as per FBR's instructions contained in Circular No. 05 of 2003 dated 30.06.2003 so that refund could be issued within three months to avoid statutory payment of compensation u/s 171 of the Ordinance for delay in payment. This has not been done. The Dept'l lapse is evident. The Deptt is directed to process the case for refund and settle the same within 45 days as per law."

3. Brief facts of the case are that this complaint was filed under Section 10(1) of the Establishment of the Federal Tax Ombudsman Ordinance, 2000 against non-issuance of income tax refunds amounting to Rs. 0.880 million for the tax years 2014 and 2015. The refund arose under Section 236A of the Income Tax Ordinance, 2001 (ITO, 2001) on account of deposit of bid money in auctions conducted by the Divisional Forest Officer, Mianwali.

4. The Complainant, a wood contractor, contends that he e-filed his income tax returns alongwith refund applications for both tax years on 16.04.2017, followed by reminder dated 17.06.2017, but elicited no response. Neither refund claim was settled nor any notice issued to the Complainant to requisition information/ documents. This attitude of the Deptt was constructed as maladministration under the FTO 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 CIR, Zone-II, RTO Sargodha vide letter dated 17.07.2017 acknowledged that returns for the tax years 2014 & 2015 were filed on 16.04.2017, but evidence of tax payment/ challans of payment were not provided. The Officer concerned vide letter No. 793 dated 30.06.2017 requested the Complainant to provide the same and also the certificates prescribed under Rule 42 of ITR 2002.

6. On the contrary, the AR contended that all the evidence/ CPR alongwith certificates under Rule 42 was filed alongwith the refund applications and copies of work order issued by DFO, Mianwali were also provided to the ACIR, Mianwali vide letter dated 25.05.2017 by FTO. Thus, FTO has issued the aforementioned findings.

7. The instant Representation has been filed by the Agency. The Agency has stated that the Complainant an individual e-filed his returns of income for the tax years 2014 & 2015 claiming refund amounting to Rs.347,704/- and Rs.532,851/- respectively, as a result of deduction of tax under Section 236A of ITO, 2001 on contract awarded by the Forest Department. Taxpayer filed complaint against non issuance of income tax refund for the tax year 2014 and 2015. The FTO passed order dated 31.08.2017 and directed to process the case for refund and settle the same within 45 days as per law.

8. The Agency has pleaded that the Refund under ITO, 2001 cannot be issued unless tax deduction is verified in the manners prescribed by the FBR, therefore, there was no maladministration in this regard. To verify the authenticity of claim, the taxpayer was requested to furnish copies of contract agreements and work orders issued by the contract awarding authorities but no such documents were filed.

9. The Agency has contended that failure to pass orders under Section 170(4) of the ITO, 2001 does not result in deemed order and instead right to file appeal accrues to the taxpayer as per provisions of Section 170(5) (b) of ITO, 2001. Since the matter under consideration is appealable under ITO, 2001, the FTO has no jurisdiction as per provisions of Section 9(2)(b) of FTO Ordinance, 2000. The President of Pakistan has explicitly held in his order in Complaint No.654/LHR/IT/C 550/11530 (M/s Colenco Power Vs. FBR) that the FTO has no jurisdiction in such refund matters wherein order in disposal of refund application has not been passed within due time. It has also held that the aggrieved person may file an appeal under section 170(5)(b) of ITO, 2001. Hence, in view of above submissions, the findings/ recommendations of the FTO are not justified. It is proposed that the Representation may be filed before the President of Pakistan against the order of the FTO.

10. The Agency has taken ground that the recommendations of the FTO are not in conformity with established law and the provisions of ITO, 2001. Therefore, Representation under Section 14 of Federal Ombudsman Institutional Reforms Act, 2013 is being preferred.

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11. The Agency has expressed that the taxpayer has the right to file appeal before the Commissioner IR (Appeals), RTO, Sargodha as per Clause (b) of sub section (5) of Section 170 of ITO, 2001 but he failed to do so. The issue involved in the instant case pertains to assessment of income and determination of tax liability. Therefore, the same is covered by the provisions of Section 9(2)(b) of the Establishment of Office of FTO Ordinance, 2000. The President of Pakistan accepted the departmental Representation in Complaint No. 101/FSD/IT(70)/830/2014 observing as under:

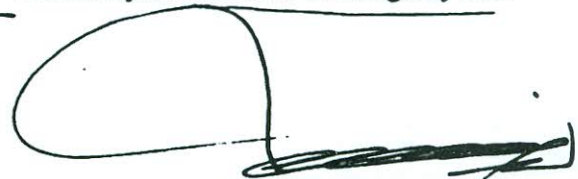
"It is an admitted position that the matter involves the determination of tax liability and refundable amount on account of tax. Such matters are appealable before the Commissioner (Appeals), Appellate Tribunal (IR), the High Court and the Supreme Court. Where remedy of appeal is provided under the law the FTO has no jurisdiction to investigate the matter in the name of maladministration. In case the Complainant was aggrieved or 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. In the circumstances, the impugned findings of FTO are not sustainable. Consequently the Representation of the Agency is liable to be accepted."

12. The Agency has prayed that the decision of the FTO dated 31.08.2017 may kindly be set aside/ vacated.

13. On the other hand, the complainant has filed his written comments against the instant representation of FBR on 24.10.2017 and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.

14. After perusal of record and examination of all documents, it has been observed that it is as clear as the crystal that FTO has made recommendations which are only to the extent to the obligation of the Deptt to complete the process of verification within 30 days of the receipt of refund application as per FBR's instructions contained in Circular No. 05 of 2003 dated 30.06.2003 so that refund could be issued within three months to avoid statutory payment of compensation u/s 171 of the Ordinance for delay in payment... The Deptt is directed to process the case for refund and settle the same within 45 days as per law. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the findings of the learned FTO are quite sustainable and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the recommendations/findings of FTO are sustainable and maintainable being unexceptional in nature in the eyes of law.

15. Accordingly, the President has been pleased to reject the instant representation of FBR-Agency and findings/recommendations of FTO are upheld.



(Zulfikar Hussain Awan)  
Director General (Legal Affairs)

✓ The Chairman,  
Federal Board of Revenue,  
Islamabad.

No. 161/FTO/2017 dated 18.12.2017

Copy for information to:

1. Mr. Muhammad Iqbal, Prop: Muhammad Iqbal Khan, Wood Contractor, Mianwali.
2. Muhammad Kashif Siddique, Kashif & Company, Consultant of Income Tax, Sales Tax, Ghosia Chowk, Lodhran City,
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
4. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file.

(Zulfikar Hussain Awan)  
Director General (Legal Affairs)