

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

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Federal Board of Revenue

Versus

M/s Phoenix Security Services (Pvt) Ltd

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS  
/RECOMMENDATIONS PASSED BY THE FTO IN COMPLAINT NO. 487-491/2003-H/C OF  
SINDH ORDER DATED 11.04.2017 IN CP NO. D-171/2004, D-640/2004, D-1202/2004 D-517/2005  
AND D-1446/2005**

I am directed to refer to constitutional petition referred by the Honourable High Court of Sindh vide their order dated 11.04.2017 on the above mentioned subject and to say that the President of Pakistan in pursuance of the orders of the High Court dated 11.04.2017 has been pleased to pass the following order:

2. The High Court of Sindh vide their order dated 11.04.2017 has been pleased to communicate in C.P.Nos. D-171 of 2004, D-640 of 2004, D-1202 of 2004, D-517 of 2005 & D-1446 of 2005 as under:

"These are a bunch of the Petitions wherein a common question of law is involved in all the instant Petitions. The Petitioners have agitated that the President of Pakistan, while passing the impugned orders on the Representations decided by the Federal Tax Ombudsman in favour of the Respondent-Department, has not given opportunity of hearing to the respective Petitioners. Learned counsel for the Petitioners, in this behalf, have placed reliance on the decision given in the case of Messrs. Siddiqsons Weaving Mills (Pvt.) Limited through Director vs. Federation of Pakistan through Secretary Law, Justice and Human Rights, Islamabad (PLD 2005 Karachi 656) and have stated that since the Petitioners were not given an opportunity of hearing, which is violation of the principle of "audi alterum partum", therefore, the order passed by the President of Pakistan is not in accordance with law and needs to be vacated. It is further contended that the issue involved in these Petitions has since been laid down at rest in the above-referred decision, therefore, the instant Petitions may be disposed of in the light of the above-referred decision. Learned counsel for the Respondents have conceded that no opportunity of hearing was provided to the Petitioners by the President of Pakistan, while passing the impugned orders. They have, however, stated that this is not a fatal defect and the same can be cured if the matters are remanded back to the President of Pakistan to pass a fresh order after providing an opportunity of hearing to the Petitioners in accordance with law.

We, after hearing the learned counsel for the parties at some length, decide the instant Petitions with their consent as under:-

1. That the matters of the Petitioners may be heard afresh by the President of Pakistan in accordance with law after providing opportunity of hearing to them.
2. That the issue with regard to the limitation or other issues would also be considered and decided by the President of Pakistan in accordance with law while deciding the Representations.

The instant Petitions stand disposed of in the above terms."

3. The particular representation dated 28.07.2003 was filed by the Federal Board of Revenue (FBR) (then CBR) against the findings of the FTO dated 20.06.2003, whereby it was held that:

- (i) Notice under section 122 issued to the complainant be withdrawn and cancelled.
- (ii) Compliance be reported within 15 days"

4. The President of Pakistan was pleased to pass the following orders on 25.4.2005:

"Accordingly, the President has been pleased to accept the representation of the Commissioner and set aside the FTO's recommendation dated 20.6.2003 in Complaint No.487 to 491-K/2003. For the benefit of the parties it is clarified that nothing said in this order or the findings of the FTO shall prejudice the parties' case before the tax authorities or the Income Tax Appellate Tribunal or the High Court or the Supreme Court if the matter is considered by any such fora."

5. The Brief facts of the case are that all these complainants have been filed by Phoenix Security Services (Pvt) Ltd. challenging the notice issued by the Commissioner of Income Tax Companies-II, under section 122 of the Income Tax Ordinance 2001 (the Ordinance). The subject matter and facts of all these complaints are identical with the difference of the assessment years ranging from assessment year 1998-99 upto 2002-2003. All these complaints will be disposed by this decision.

6. The complainant is a private limited company engaged in the business of providing security services to banks, financial institutions, commercial organizations and residential houses. The complainant is being assessed under normal law since its inception and was borne on NTN:- 12-07-0711651. The complainant for the assessment year 1998-99 had filed return under section 55 of Income Tax Ordinance 1979 which was assessed under section 62 of the Income Tax Ordinance 1979 (repealed ordinance). Similar treatment was given to the assessments for assessment years 1999-2000 to 2002-2003. These assessment orders were revised under section 66A of the repealed Ordinance by the Inspecting Additional Commissioner. Even after the introduction of presumption tax regime under

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