

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

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Federal Board of Revenue  
Versus  
M/s B.P Industries (Pvt) Ltd, Karachi

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS  
RECOMMENDATIONS PASSED BY THE FTO IN COMPLAINT NO. 1505-K/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 follows:

"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 16.07.2004 has been filed by the Federal Board of Revenue (FBR) (then CBR) against the findings of the FTO dated 18.06.2004, whereby it has been held that:

- (i) The C.B.R to direct the Commissioner Income Tax to cancel the order dated 24.10.2003 for the assessment year 1998-99 in the case of the complainant under section 122A of the Income Tax Ordinance 2001 within 30 days of the receipt of this order.
- (ii) Compliance be reported within a week thereafter."

4. The President of Pakistan was pleased to pass the following orders on 12.10.2005:

"Section 9(2) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 so far as relevant provides that the FTO shall have no jurisdiction to investigate or inquire into matter which relate to assessment of income... determination of liability of tax ... interpretation of law...relating to such assessment...in respect of which legal remedies of appeal etc. are available under the Relevant Legislation. Besides that the FTO's findings in para 15 of his impugned finding is inconsistent with his own finding in complaint No.328-L/2004 decided on 7.8.2004 his recommendation cannot be sustained for the reason that the matter raised in the complaint was a pure question of law. The FTO's findings itself only identify error of law in the process initiated by the Commissioner under Section 122 of the 2001 Ordinance and not any element of mal-administration such as inattention, corrupt motives etc. Universally accepted view is that the office of the ombudsman is not a substitute for courts or tribunals. He is not required to give judgments on legal issues. If the FTO's recommendation is affirmed by the President the Commissioner being a State functionary will be unable to challenge the decision of the Head of the State, even if the decision is wrong. Thus, the department will be deprived of the right to have access to justice through judicial branch of the State. Accordingly, the President

*SS (TGT & FD)  
Jn M.A.*

*Jn  
22/11/17*

*1429/16 R  
22/11/17*

