Mansoor Sahib

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

Federal Board of Revenue
Versus
Mr. Muhammad Ashraf Faisalabad

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD AGAINST FINDINGS/ RECOMMENDATIONS DATED 18.08.2016 PASSED BY THE FTO IN COMPLAINT NO. FTO-FSD/0000568/2016

I am directed to refer to constitutional petition referred by the Honourable Lahore High Court vide their order dated 11.01.2018 on the above mentioned subject and to say that the President of Pakistan in pursuance of the orders of the High Court dated 11.01.2018 has been pleased to pass the following order:

2. The Hon'ble Lahore High Court Lahore vide order dated 11.01.2018 in the Intra Court Appeal (ICA) No. 123088/2017 has been pleased to hold that:

> **"Through this ICA, the Appellant has impugned order dated 25.09.2017 passed by the learned Single Judge in WP No. 5513/2017.**
>
> **At the very outset learned counsel for the Appellant was confronted with the fact that the impugned order dated 25.09.2017 passed by the learned Single Judge simply remand the matter to the President's Secretariat for deciding the matter afresh and that the issue of limitation should be taken up and decided before other issues. Under the circumstances, we are of the opinion that no right of the Appellant is infringed through the impugned order. It is simply a remand order where the Appellant can also be heard. No illegality is made out in the impugned order.**
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> **In view of the aforesaid, the instant appeal is dismissed and impugned order dated 25.09.2017 passed by the learned Single Judge in WP No. 5513/2017 is maintained".**

Lahore High Court, Lahore vide their order dated 25.09.2017 has been pleased to hold that:-

> **"The fact that a representation was filed beyond time has also been conceded to by the FBR which has filed an application for delay of one day to be condoned. This application was too not decided by the officer deciding the representation on behalf of the President. This has caused miscarriage of justice and the impugned order is liable to be set aside on this ground.**
> **In view of the above, this petition is allowed and the impugned order dated 21.11.2016 is hereby set aside. The matter is remanded to the President's Secretariat, Aiwan-e-Sadr, Islamabad for deciding the issue afresh and in this regard, the issue of limitation shall be taken up and decided ahead of all other issues and the objections regarding the period of limitation and the powers to condone that delay in filing the representation shall be decided afresh."**

3. This Representation dated 19.08.2016 has been filed by the Agency–FBR against the orders dated 18.08.2016 of the Federal Tax Ombudsman, whereby it has been held:

> **"FBR to-**
>
> i. **Direct the Commissioner to dispose of refund claim within 21 days; and**
> ii. **Report compliance within 07 days".**

4. The brief facts of the case are that this complaint is filed against non issuance of refund of Rs. 3.174 million for the Tax Year 2014. According to the Complainant, return was filed on 05.12.2014 and refund application was e-filed on 04.04.2016 supported by documentary evidence, but the claim was not settled.

5. The complaint was sent for comments to the Secretary, Revenue Division, Islamabad in terms of Section 10(4) of the FTO Ordinance. In response, FBR vide letter C.No.4(568)/TO-I/2016 dated 30.06.2016 forwarded comments of the Commissioner, IR dated 23.06.2016. the Department raised preliminary objection that the matter relates to the determination of tax liability and assessment of income and as such, office of FTO had no jurisdiction to investigate or inquire into the matter in terms of Section 9(2)(b) of the FTO Ordinance, 2000 as held by the President of Pakistan in Representation in C.No.217/FSD/IT(140)1358/ 2014 and C.No. 173/FSD/IT(134)719/2015. On merits, it was contended that supporting documents were not available on record and so the genuineness of refund could not be ascertained. Further, the Additional Commissioner IR (Audit) had examined the return and found it erroneous and prejudicial to the interest of revenue. He, therefore, initiated proceedings under Section 122(5A) of the Income Tax Ordinance by issuing notice No.486 dated 23.04.2015. The Complainant contested the proceedings before the FTO vide C.No.193/FSD/IT (148)/827/2015, but the same was rejected vide order dated 26.11.2015. Review