

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

Federal Board of Revenue
Versus
M/s AL-Madni Cotton Factory, Mianwali

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 27.10.2017 PASSED BY THE FTO IN COMPLAINT NO.
FTO-LHR/0000371/2017**

I am directed to refer to your representation No. 4(0371)S(TO-I)/2017, dated 24.11.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 24.11.2017 has been filed by the Agency-FBR against the findings of the FTO dated 27.10.2017 whereby it has been held:

"FBR to-

- (i) Direct the Commissioner IR to dispose of refund due, in accordance with law; 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 FTO Ordinance, 2000 against non-issuance of income tax refund amounting to Rs. 0.660 million for tax year 2016. The refund arose on account of excess income tax deduction on cash withdrawals from bank and electricity bills under Section 231A & 235 of Income Tax Ordinance, 2001 (ITO, 2001).

4. The Complainant, an AOP contends that he e-filed his income tax return alongwith refund application for tax year 2016 on 05.01.2017. Statedly, supportive documents were also filed online. Neither, order under Section 170(4) of the Ordinance was passed by the Deptt within the prescribed time nor any notice was issued to the Complainant to requisition information/ documents required for processing of refund. This attitude of the Deptt was construed as maladministration under Section 2(3)(ii) of the FTO Ordinance.

5. The complaint was sent for comments to the Secretary, Revenue Division in terms of Section 10(4) of the Ordinance. In response, the Chief Commissioner IR, RTO, Sargodha vide letter No. RTO/SG/2017-2018/775 dated 02.10.2017 forwarded comments of the Commissioner IR, Zone-II, RTO, Sargodha bearing No. 453 dated 29.09.2017 raising preliminary objection that failure to pass an order under Section 170(4) of the Ordinance was appealable before the Commissioner (Appeals) as provided in Section 170(5)(b) of the Ordinance and as such, this Forum had no jurisdiction to investigate the matter as it attracted bar under Section 9(2)(b) of FTO Ordinance.

6. On merits, it was stated that the supportive documents and bank account statement was not provided in support of tax deduction under Section 231A of the Ordinance and tax deduction certificate on the prescribed format as per Rule 42 was also not furnished. Further stated that return for tax year 2016 was filed after due date and as such, penalty under Section 182(1)(1) of the Ordinance was leviable. Arguments heard and available record perused by the FTO. Thus, FTO has issued aforementioned findings.

7. The instant Representation has been filed by the Agency. 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 the Federal Ombudsmen Institutional Reforms Act, 2013 is being preferred. 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 the FTO Ordinance, 2000. The President accepted the departmental representation in C.No.101/FSD/IT(70)/830/2014 and observing as under:

"It is 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 of 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".

8. The Agency has pleaded that the President also accepted the departmental representation in another C.No. FTO/HQR/0000651/2016 (M/s Zhongxing Telecom Pakistan (Pvt) Ltd Islamabad) and passed Order No. 42/FTO/2017 dated 02.05.2017 and observing as under:

"FTO is barred u/s 9(2)(b) if FTO Ordinance. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Thus FTO having gone beyond the scope and powers, the impugned findings are not sustainable. Consequently, the Agency's representation is liable to be accepted. However, the complainant can seek remedy available to him from the

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relevant forums under the law. Accordingly, the President has been pleased to accept the representation of the Agency and to set aside the impugned recommendations/ findings of learned FTO".

9. The Agency has prayed that the decision of the FTO dated 27.10.2017 may be vacated.

10. On the other hand, the Complainant has not filed comments against the instant representation of Agency despite issuance of letters on 29.11.2017 and 08.12.2017 by this Secretariat.

11. After perusal of record and examination of all documents, it has been noted that it is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the Commissioner IR to dispose of refund due, in accordance with law within 45 days. 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.

12. Needless to be mentioned that this representation has been filed by the Agency-FBR repeating the contents of the pleadings already made before the learned FTO. Nothing turns on the same as it fails to answer the reasoning of FTO and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the FTO. Undoubtedly FTO decision is based on sound reasoning and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability.

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

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 171/FTO/2017 dated 29.01.2018

Copy for information to:

1. M/s Al-Madni Cotton Factory, M.M. Road Hameed Kot, Opposite Hazara Petroleum, Mianwali.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)