

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

Federal Board of Revenue
Versus
Mr. Muhammad Naqi Bari, Karachi

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 11.10.2017 PASSED BY THE FTO IN COMPLAINT NO.
329/KHI/IT/2017**

I am directed to refer to your representation No. 4(0329)S(To-I)/2017, dated 10.11.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 10.11.2017 has been filed by the Agency-FBR against the findings of the FTO dated 11.10.2017 whereby it has been held:

“FBR to direct the Commissioner IR to:

- i. Complete the verification process and settle refund claims for the tax years 2014 and 2015, as per law, and;
- ii. Report compliance within 45 days thereafter.”

3. Brief facts of the case are that this complaint was filed under Section 10(1) of the FTO Ordinance, 2000 against delay in passing orders under Section 170(4) of the Income Tax Ordinance, 2001 and as a consequence non-issuance of refund for tax years 2014 and 2015. The Complainant, a manufacturer of textile articles filed returns of income for tax years 2014 and 2015 under Section 114 of the Ordinance, and claimed refund amounting to Rs. 3.193 million and Rs.37.547 million. According to the AR, the Complainant also filed online refund applications for tax years 2014 and 2015 on the prescribed format on 01.06.2016 and 25.07.2016 respectively. However, despite repeated efforts of the Complainant, the Department failed to pass orders under Section 170(4) of the Ordinance within the stipulated time.

4. In response to the notice of complaint issued to the Secretary, Revenue Division the Commissioner-IR, Zone-I, RTO-III, Karachi submitted parawise comments dated 15.09.2017. It was contended that the Complainant filed returns of income for tax years 2014 and 2015 on 10.01.2015 and 31.12.2015 and filed refund and filed refund applications claiming refund of Rs. 3.193 million and Rs. 37.547 million for the tax years 2014 and 2015. However, he has failed to submit any documentary evidence in support of tax deductions/ payments claimed. It was further contended that the Complainant had already been required to submit relevant evidence of tax deduction, so that the refund applications for tax years 2014 and 2015 could be processed and disposed of, as per law.

5. During the hearing, the Authorized Representative (AR) produced copies of correspondence which clearly shows that the Complainant has already furnished the requisite details and documents. The Departmental Representative (DR) undertook to complete the verification and settle refund for tax years 2014 and 2015 within 30 days as per law. The averments of both the parties have been given due consideration and record available perused. Thus, FTO has issued aforementioned findings.

6. The instant Representation has been filed by the Agency. The Agency has stated that the taxpayer is a private limited concern registered with the department at NTN 1021059 under the name and style of M/s Bari Textile Mills (Pvt) Ltd. The taxpayer is manufacturer and exporter of textile items. The taxpayer filed original return of income for tax year 2014 under Section 114(1) of Income Tax Ordinance, 2001 as on 10.01.2015 and later revised the same and e-filed the revised return under Section 114(6) of Income Tax Ordinance, 2001 as on 12.08.2015. The taxpayer filed statement of final taxation under Section 115(4) of Income Tax Ordinance, 2001 for tax year 2015 as on 31.12.2015. As per record the e-filed application of refund under Section 170 of Income Tax Ordinance, 2001 is not available. As per return/ final statement the taxpayer claimed refund of Rs. 3,193,941/- for tax year 2014 and Rs. 37,547,300/- for tax year 2015.

7. The Agency has pointed out that taxpayer filed complaint before the FTO under Section 10(1) of FTO Ordinance, 2000 against delay in passing orders under Section 170(4) of Income Tax Ordinance, 2001 and as a consequence non-issuance of refund for the tax year 2014 and 2015. The department pleaded that essential documents were not filed and for the reason of incomplete documentation the refund could not be processed as the application was not complete.

8. The Agency has emphasized that the FTO announced the finding/ recommendations as on 12.10.2017 and the copy of the same received as on 18.10.2017. the FTO has observed that inordinate delay in disposing of refund applications for tax years 2014 and 2015 tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance, 2001 and recommended FBR to direct the Commissioner-IR to complete the verification process and settle refund claims for the tax years 2014 and 2015 as per law and to report compliance within 45 days thereafter.

9. The Agency has taken ground that the FTO has erred in appreciating the facts and law while giving the findings/ recommendations against the application in his order dated 12.10.2017. Legal remedy against the failure of

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the Commissioner-IR to pass order under Section 170(4) of Income Tax Ordinance, 2001 within the prescribed period was available with the taxpayer in terms of Section 170(5) (b) of Income Tax Ordinance, 2001 and the taxpayer could have preferred an appeal under Part-III of Chapter X of Income Tax Ordinance, 2001. In case the Commissioner-IR had not issued an order under Section 170(4) of Income Tax Ordinance, 2001 on the refund application, the taxpayer had a right of appeal as prescribed under Part-III of Chapter X of Income Tax Ordinance, 2001 and, therefore, the complaint before the FTO was without lawful jurisdiction.

10. The Agency has contended that the FTO lacked jurisdiction to entertain the complaint in view of the provision of Section 9(2)(b) of the FTO Ordinance, 2000. The FTO does not have the jurisdiction in the matters in respect of legal remedies are available/ provided as is the case of Section 170 of Income Tax Ordinance, 2001 wherein subsection (5)(b) provides the remedy of appeal to the taxpayer. The Department's stance is also strengthened by the order passes by the Lahore High Court in W.P. No. 599/2017 dated 27.04.2017 in the case of M/s Shahzadi Polypropylene Industries Vs Federation of Pakistan etc.

11. The Agency has prayed that the impugned findings/ recommendation of the FTO in C.No. FTO/KHI/IT/0000329/2017 dated 12.10.2017 may be cancelled by declaring it in excess of jurisdiction and against the spirit of law.

12. On the other hand, the complainant has filed his written comments against the instant representation of FBR on 4.12.2017 and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.

13. It is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the Commissioner IR to complete the verification process and settle refund claims for the tax years 2014 and 2015, as per law, within 45 days thereafter. 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.

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

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 165/FTO/2017 dated 29.01.2018

Copy for information to:

1. Mr. Muhammad Naqi Bari, Director: M/s Bari Textile Mills (Pvt) Ltd, 29/A, PECHS, Shahrah-e-Quaideen, Karachi.
2. Mr. Jawad Ahmed, FCA, M/S Muhammad Farooq & CO, Chartered Accountants, 113-115 Technocity Office Tower, I.I. Chundrigar Road, Karachi.
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.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)