

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

Federal Board of Revenue
 Versus
 Mr. Allah-ud-Din, Chiniot

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 17.10.2017 PASSED BY THE FTO IN COMPLAINT NO. FTO-FSD/0000031/2017

I am directed to refer to your representation No. 4(031)S(TO-I)/2017, dated 16.11.2017 on the above subject and to say that the President has been ^{pleased} to pass the following order:

2. This Representation dated 16.11.2017 has been filed by the Agency-FBR against the findings of the FTO dated 17.10.2017 whereby it has been held:

“FBR to:

- i. Direct the Commissioner IR to revisit order u/s 122C for tax year 2012 by invoking revisionary jurisdiction u/s 122A of the Ordinance, after providing opportunity of hearing to the Complainant; 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 the FTO Ordinance, 2000 against the provisional assessment order under Section 122C of the Income Tax Ordinance 2001 (ITO, 2001) dated 20.04.2014 for tax year 2012.

4. According to the Complainant, the order under Section 122C of the Ordinance passed by the DCIR, BTB Unit-03, RTO, Faisalabad was illegal and against the facts of the case as the same was passed by violating the rules, regulations and without providing sufficient opportunity of hearing to defend the case. On receipt of recovery notice under Section 138 of the Ordinance, the IRO was approached by him for issuance of certified copies of order and demand notice, but the same were not provided. Thereafter, a request was made to the CIR vide letter dated 22.04.2015 whereupon attested copies of order and demand notice were issued. On receipt of the same, the return along-with wealth statement and wealth reconciliation statement were filed on 10.06.2015 within the prescribed time limit as per provisions of Section 122C(2) of the Ordinance, but the same were not considered and instead the Deptt initiated recovery proceedings through issuance of notice under Section 138 of the Ordinance which was in violation of FBR's Circular C.No. 69(1)S.DOS/2009-138499-R dated 05.10.2010. The Circular provides that where the aforementioned documents are filed within the time prescribed under Section 122C(2) of the Ordinance, the provisional demand shall be taken to minus (-) account. In view thereof and in response to recovery notice dated 14.12.2016, the CIR, Jhang Zone was requested vide letter dated 31.01.2017 followed by reminders dated 17.02.2017 and 20.03.2017 to close the proceedings initiated under Section 138 read with Section 122C of the Ordinance, but the Complainant's grievance was not redressed. According to the Complainant, Show Cause Notice, notices under Section 144 & 116 and order passed under Section 122C were neither served upon the Complainant nor his AR. In this regard, he submitted an affidavit to the Deptt, but to no avail, hence this complaint.

5. The complaint was sent for comments to the Secretary, Revenue Division, Islamabad in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013. In response thereof, the Chief Commissioner IR vide letter No. CC/RTO/FSD/5645 dated 05.05.2017 forwarded comments of the Commissioner IR, Jhang Zone bearing No. CIR/Jhang Zone/ 1739 dated 05.05.2017. The Deptt raised preliminary objections that the matter relates to the determination of tax liability and assessment of income and as such, this Forum has no jurisdiction to investigate or inquire into the matter in terms of Section 9(2)(b) of the FTO Ordinance. Further submitted that the complaint was filed violating the provisions of Section 10(3) of the FTO Ordinance as the demand notice was served on 26.05.2014 and complaint was filed on 31.03.2017 after lapse of more than two years. Further contended that proceedings under Section 122C were initiated on the basis of National Date Ware House (NDW) information and the statutory notice under Section 114(4), 116(1) and Show Cause Notice under Section 122C read with Section 111(1)(b) were issued vide letter No. 207 dated 10.04.2014 which remained un-complied with. According to the Deptt, the assessment was finalized on 30.04.2014 after fulfillment of all the legal requirements and tax demand of Rs. 0.443 million was created. Statedly, notices and order under Section 122C of the Ordinance were served upon the Complainant on 26.05.2014 through UMS/ Special Messenger at the given address which was a valid service under Section 218 of the Ordinance. Arguments heard and record perused by the FTO. Thus, FTO has issued aforementioned findings.

6. The instant Representation has been filed by the FBR-Agency. The Agency has taken ground that the recommendations of the FTO are not in conformity with the established law, as the same are against the express provisions of the FTO Ordinance, 2000 and ITO, 2001. Therefore, representation under Section 14 of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013 is being preferred on the following grounds:

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