

**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 <sup>pleased</sup> 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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 44(70.1)  
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 44(70.1)



- a. FTO was not justified to intervene in the matters;
- b. Where the matter is subjudice before a competent authority under Section 9(2)(b) of the FTO Ordinance, 2000, however, the matter in this case was already subjudice before the CIR Jhang Zone on an application dated 17.02.2017 by the taxpayer;
- c. Where the remedy of appeal/ revision is available to the taxpayer under Section 9(2)(b) of FTO Ordinance, 2000. As the right of revision under Section 122A of the ITO, 2001 was available to the taxpayer.
- d. Where the complaint is filed after six months from the day on which aggrieved person had the notice of the matter under Section 10(3) of the FTO Ordinance, 2000. Whereas in the instant case assessment order/ demand notice in the subject case was served upon the taxpayer on 26.05.2014 and complaint has been filed before the FTO on 31.03.2017 i.e. after the period of 2 years 10 months.

7. The Agency has pointed out that even if the taxpayer did not recognize his service of demand notice on 26.05.2014, the service of the notice under Section 138 No. 945 dated 03.04.2015 made on his son Mr. Shoaib Raza on 08.04.2015 has been acknowledged by the tax payer in his application dated 16.04.2015 (available on record) for issuance of certified copies of the order/ demand notice. Meaning thereby that the taxpayer had the notice of the matter on 08.04.2015 as alleged in the complaint. The impugned recommendations being without jurisdiction are illegal and nullity in the eyes of law and are not liable to be implemented as no maladministration is involved. Reliance in this regard is placed on the following orders passed by the President of Pakistan.

8. The Agency has pleaded that the President vide Order dated 01.06.2016 set aside the recommendations of FTO, where the FTO vide order dated 19.10.2015 recommended to invoke revisionary jurisdiction under Section 122A in C.No. 961/2015 in the case of Mian Bashir Ahmed, Faisalabad with the observation that FTO has no jurisdiction to intervene in the matters where remedy by way of filing an appeal is available.

9. The Agency has contended that the President in Order dated 09.06.2016 set aside the recommendations of FTO, where by FTO vide order dated 06.10.2012 recommended to decide the issue of jurisdiction in three weeks and direct the Commissioner concerned to invoke the provisions of Section 122A of the ITO, 2001 in C.No. 756/2015 in the case of Ch. Nazir Ahmad, Islamabad with the observation that the same are not sustainable in the light of Section 9(2)(b) of FTO Ordinance, 2000.

10. The Agency has prayed that the decision of the FTO dated 17.10.2017 in this case may be vacated.

11. On the other hand, the complainant has filed his written comments against the instant representation of FBR on 5.12.2017 and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.

12. After perusal of record and examination of all documents, it has been observed that there is no question on the facts that the jurisdiction of the FTO is barred u/s 9(2)(b) to investigate or inquire into the matter which relate to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulations relating to such assessment / determination in respect of which legal remedy of appeal or review or revision is available under the relevant legislation. In case the complainant was aggrieved of any action or inaction of the Agency, the complainant has the remedy to file an appeal to the Commissioner Appeals, Income Tax Tribunal, the High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. In such circumstances, where remedy of appeal was available, FTO could not interfere with and could not pass orders under garb of maladministration.

13. It has been settled by the Supreme Court of Pakistan in case of Mst. Kaniz Fatima reported in 2001 SCMR 1493, that where a particular statute provides self contained machinery for determination of questions arising under the statute and law provides a remedy by appeal or revision to another forum fully competent to give any relief, any indulgence to the contrary by any other forum is bound to produce a sense of distrust in statutory forums and writ petition will not be maintainable without first availing the alternate statutory legal remedy. The FTO has no jurisdiction to set aside the order where the forum of appeal is available to the complainant. Thus the impugned findings are not sustainable and the representation is liable to be accepted.

14. It is an 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 (Appeal), 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.

15. 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 relevant forums under the law.



16. Accordingly, the President has been pleased to accept the instant representation of Agency-FBR and to set aside the impugned recommendations/findings of FTO.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No. 167/FTO/2017 dated 29.01.2018

Copy for information to:

1. Mr. Allah-ud-Din, S/o Mr. Muhammad Shafi (Late), House No. 156, Mohallah: Mushki Shah, Chiniot.
2. Mr. Safdar Hussain Bhatti, Advocate, Taxo Corporate & Tax Management Consultants, P-45, 1<sup>st</sup> Floor, Riaz Shahid Chowk, New Civil Lines, Faisalabad.
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)