

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

Federal Board of Revenue
Vs
Mr. Bilal Fazal, Faisalabad.

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SUB: REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS/RECOMMENDATIONS DATED 24.4.2017 PASSED BY THE FTO IN COMPLAINT NO. FTO-FSD/0000002/2017

19 AUG 2017
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I am directed to refer to your representation No. 4(02)S(TO-1)/2017 dated 11.05.2017 on the above subject and to say that the President has been pleased to pass the following orders:

2. This Representation dated 11.05.2017 has been filed by the Agency - FBR against the findings of the FTO dated 24.04.2017, whereby it has been held that:

"FBR to -

- i. Direct the CIR to issue refund early; and
- ii. Report compliance within 45 days."

3. The brief facts of the case are that the complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against the provisional assessment under Section 122C of the Income Tax Ordinance, 2001 (the Ordinance) for tax year 2010 and non-issuance of refund amounting to Rs.0.268 million.

4. The complainant, an employee of Schlumberger Seaco Inc., has been residing abroad. He claimed that statutory notices were neither received by him nor served upon his representative. Under the circumstances, provisional assessment made by the DCIR, BTB, Unit-III, RTO, Rawalpindi was bad in law, harsh, unjustified, without jurisdiction and against facts of the case. Further, he, being a salaried person, was an existing assessee of RTO, Faisalabad having NTN 3277305-6 since tax year 2009, but RTO, Rawalpindi made unlawful assessment and had illegally drawn an amount of Rs.0.268 million from his account in Standard Chartered Bank, Faisalabad in violation of the prescribed procedure. He came to know of the assessment and recovery when he visited Pakistan. The Complainant then filed application for revision under Section 122A on 17.08.2016 followed by reminder dated 28.11.2016, but solicited no response, hence this complaint.

5. The complaint was referred for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance, 2000. In response, Chief Commissioner IR, RTO, Rawalpindi vide letter C.No.RTO/LO/Legal/HQ/FTO-02/3664 dated 08.02.2017 intimated that provisional assessment order u/s 122C of the Ordinance has been cancelled by the CIR on 07.02.2017 by invoking the provisions of Section 122A of the Ordinance. Further, assessment record has been transferred to the relevant jurisdiction in RTO, Faisalabad. Comments of CCIR, RTO, Faisalabad were also sought in the matter who vide C.No.CCIR/RTO/FSD/4872 dated 30.03.2017 forwarded comments of the CIR, Lyallpur zone bearing No. CIR/LYP. Zone/RTO/Fsd/2668 dated 28.03.2017. The CIR, Lyallpur Zone intimated that notices u/s 140 & 176 read with Rule 69 of the Income Tax Rules 2002 have been withdrawn on 27.03.2017 and bank authorities have been asked to de-attach account of the Complainant. Further submitted that the Complainant had filed return for tax year 2009 only and as such, notices u/s 114(4) & 116(1) have been issued for tax years 2010 to 2015 for filing returns and wealth statements. Whereas, refund claim has not been filed in the prescribed manner and as such the same could not be processed. However, the claim would be settled as and when the same is filed in accordance with the prescribed procedure.

6. The DR reiterated the written comments, but could not justify as to why discrepancy, if any, was not communicated to the Complainant immediately after receiving his application dated 17.08.2016.

7. The complaint has been examined in the light of the written and oral submissions of the parties and facts available on record by FTO. Thus FTO has issued aforementioned findings.

8. The instant Representation has been filed by FBR. The Agency has stated that the complainant is an individual and resident of Faisalabad. He has furnished Income tax return for the tax year 2009 only and has not furnished any return for any of the tax years 2010-2016. Notices u/s 114(4) and 116(1) for the said tax years have been issued by the RTO Faisalabad to the taxpayer and served on the given address for filing of returns & wealth statements. Taxpayer did not make compliance of the said notices.

9. The Agency has pointed out that proceedings in this case were initiated by the BTB Unit-III, RTO Rawalpindi in order to probe source of investment made in the purchase of Plot No, 2-E/N in DHA, Rawalpindi for consideration of Rs.3,400,000/- on 20.01.2010 relevant to tax year 2010. Notices u/s 114(4), 116(1) and Show cause notices were duly issued by the BTB office, Rawalpindi for compliance. But the taxpayer failed to

FBR e-Dox No. 6049
Received in Chief (Legal) Office

11/8/17

FBR e-Dox No. 10772-1
Received in /Ch. Secy.

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make any compliance of the said notices. As a result of consistent non compliance, the officer finalized assessment by passing order u/s 122C of the Income Tax Ordinance, 2001 which was served on the complainant at the given address in accordance with the provisions of section 218 of the Income tax Ordinance, 2001.

10. The Agency has elaborated that the complainant again failed to make compliance of the order u/s 122C. Consequently, the Officer, BTB Rawalpindi issued notice for recovery of tax under section 138(1) followed by notice u/s 140 for the attachment of bank account of the complainant. Resultantly, amount of Rs,268,000/- was recovered through the attachment of bank account. The complainant filed application for the revision under section 122A on the grounds that he has filed return for the tax 2009 in RTO Faisalabad, therefore, the taxpayer falls in the jurisdiction of RTO, Faisalabad and he was nonresident in the tax year 2010. As a result Order passed u/s 122C by the BTB Officer, Rawalpindi is beyond the jurisdiction. The Commissioner (IR) City Zone, RTO, Rawalpindi cancelled the Order u/s 122C by invoking section 122A of the Income tax Ordinance, 2001 on 07.02.2017.

11. The Agency has pleaded that letters were issued for detachment of the bank account by the Officer, RTO, Faisalabad on the receipt of assessment record of the complainant from the RTO, Rawalpindi. The complainant has neither furnished any application to the concerned Officer, RTO Faisalabad for issuance of refund on the prescribed form nor furnished any return/ wealth statement for the tax years 2010-2016 or evidence of its non – residential status in accordance with the provisions of Income Tax Ordinance, 2001. While deciding complaint filed by the taxpayer, the Honourable Federal Tax Ombudsman vide findings/ recommendations dated 25.04.2017 has recommended the FBR to direct the CIR to issue refund early; and report compliance within 45 days.

12. The Agency has taken ground that the aforementioned recommendations of the Honourable Federal Tax Ombudsman are contrary to the express provisions of the Income tax Ordinance, 2001 and those of the Federal Tax Ombudsman Ordinance, 2000 which need to be cancelled on the basis facts narrated above.

13. The Agency has expressed that the FTO is not justified in giving directions to the Commissioner (IR) for early issuance of refund when the complainant has neither been filing his income tax returns for the tax years 2010-2016 nor he has furnished any reason for non filing of returns for the said tax years to the concerned officer i.e. Unit-07, Lyallpur Zone, Faisalabad.

14. The Agency has apprised that the taxpayer has neither furnished any application on the prescribed form for the refund for amount recovered through attachment of the bank account nor he has filed any income tax return showing that he has no tax liability in the relevant tax year. Therefore, no maladministration is established regarding intentional delay for issuance of refund.

15. The Agency has prayed that the no mal-administration is proved against the petitioner. It is, therefore, prayed that the impugned recommendations/ findings may very graciously be set-aside.

16. On the other hand, the complainant has filed his comments against the instant representation of FBR on 5.7.2017 through Nawaz Khan, FCA Senior Partner and supported the impugned recommendations/findings of learned FTO with request that the representation of Agency may be rejected.

17. 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.

18. 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.

19. 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.

20. 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.

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



Zulfiqar Hussain Awan)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.98/FTO/2017 dated 07.08.2017

Copy for information to:

1. Mr. Bilal Fazal, H.No.16, W-1, Madina Town, Faisalabad.
2. Mr. Nawaz Khan, FCA, Senior Partner, Qadeer & Company, Chartered Accountants, Head Office: 89-F, Jail Road, Lahore.
3. The Chief (Legal), Federal Board of Revenue, Islamabad.
4. The Registrar, Federal Tax Ombudsman Secretariat, Islamabad,
5. Director to Secretary to the President.
6. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal)