

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

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Federal Board of Revenue  
Versus

M/s Tajammal Commission Shop, Hafizabad

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS  
/ RECOMMENDATIONS DATED 05.09.2017 PASSED BY THE FTO IN COMPLAINT NO.  
FTO-LHR/0000024/2017**

I am directed to refer to your representation No. 4(24)S(TO-I)/2017, dated 27.09.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 27.09.2017 has been filed by the Agency-FBR against the findings of the FTO dated 05.09.2017 whereby it has been held that:

"FBR to-

- (i) Direct the Commissioner IR to dispose of refund claims/ compensation due for all tax years after proper verification and confirmation of tax payments u/s 234 & 235 of the Ordinance in accordance with law; and
- (ii) Report compliance within 45 days."

3. Brief facts of the case are that this complaint was filed under Section 10(1) of Establishment of the Federal Tax Ombudsman Ordinance, 2000, against non issuance of refund for tax years 2010-2014.

4. The Complainant, an individual, has been assessed under Section 120(1) of the Income Tax Ordinance, 2001 (ITO, 2001) for tax years 2010 to 2014 on 25.09.2010, 26.10.2011, 19.09.2012, 10.11.2013 and 21.10.2014 respectively claiming refunds of Rs. 0.092 million, Rs. 0.110 million, Rs. 0.046 million, Rs. 0.039 million and Rs. 0.150 million respectively. Refund applications were statedly filed for tax year 2010 on 25.09.2010, 04.12.2010 and 15.12.2016 for tax year 2011 on 07.12.2011, 07.05.2012 and 15.12.2016 for tax year 2012 on 04.08.2016, 06.01.2017 and 19.01.2017 and for tax years 2013 and 2014 on 04.08.2016, 20.10.2016 and 19.01.2017 income tax at source under Sections 231A and 235 of the ITO, 2001 on cash withdrawals from banks and in electricity bills. The Complainant contends that all requirements of law and procedure stipulated in the statute for claiming refund have statedly been fulfilled, the Dept has failed to process and dispose of the long pending refund claims.

5. When confronted under Section 10(4) of the FTO Ordinance the Dept filed reply and raised preliminary objections that the Complainant ought to have filed appeal before CIR (Appeals) as provided for under Section 170(5)(b) of the Ordinance rather than filing a complaint under the FTO Ordinance. It was also contended that the bar laid down under Section 10(3) of the FTO Ordinance was also attracted as the complaint has been filed long after expiry of the six months period stipulated in the FTO Ordinance.

6. The Complainant was confronted with the Dept'l reply and asked to file a rejoinder. In compliance the AR submitted rejoinder on 11.04.2017 wherein he referred to Hon'ble President's decisions disposing of Dept'l Representations in identical cases in C.NO. 0000724/2016 and C.No. 0000739/2016, endorsing FTO decisions. As for delay reckoned under Section 10(3) of the FTO Ordinance, the Complainant contended that he filed complaint on 30.01.2017 after filing refund applications for tax years 2013 and 2014 on 04.08.2016 within the time allowed under the Ordinance. Whereas, refund applications for tax years 2010 and 2011 were e-filed on 25.09.2010 and 07.12.2011 respectively and also manually filed on 04.12.2010 & 15.12.2016 (for tax year 2010) and on 07.05.2012 & 15.12.2016 (for tax year 2016). Since, the time of e-filing of refund application for these years till the filing of application manually, the Complainant continuously pursued the matter. The Complainant's AR vide another rejoinder dated 07.07.2017 stated that the Complainant had already filed his refund applications online, but the Department had failed to issue genuine admitted refund within the stipulated time frame despite visits of the office time and again. The concerned officer promised to resolve the matter/ issue refund after 30<sup>th</sup> June of each year, but the promises were not fulfilled. As such, the Complainant was compelled to approach this Forum for redressal of his grievance. The Complainant also prayed that any delay in the circumstances narrated above may be contended under Section 10(3) of the FTO Ordinance by the FTO. Thus, FTO has issued aforementioned findings.

7. The instant Representation has been filed by the Agency. The Agency has pointed out that the FTO was not justified to entertain the complaint in view of bar under Section 9(2)(b) of the FTO Ordinance, 2000 because the matter involved was appealable under Section 170(5)(b) of the ITO, 2001. The President of Pakistan in Order No. 155/FTO/2016 dated 02.01.2017 in Complaint No. LHR/000738/2016 and Order No. 30/FTO/2016 dated 16.08.2016 in review application No.49/2015 in Complaint No.154/KHI/ST(66)/527/2015 has held that: "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". In the same order, it has been held that: "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 (Appeals), Appellate Tribunal (IR), the High Court and

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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 or 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."

8. The Agency has stated that the Lahore High Court, Lahore vide Order dated 27.04.2017 passed in Writ Petition No. 599/2017 has endorsed the order of the President of Pakistan on the bar under Section 9(2)(b) of the FTO Ordinance, 2000 in the case of M/s Shahzadi Polypropline Industries Vs. FoP holding therein that FTO does not have the jurisdiction in matters delineated therein as also in matters in respect of which legal remedies are provided in the law.

9. The Agency has underscored that the FTO did not appreciate the departmental preliminary objection that the complaint was hit by time limitation as per Section 10(3) of the FTO Ordinance, 2000, as the refund applications for tax years 2010 and 2011 were filed on 25.09.2010 and 07.12.2011 whereas the complaint was filed on 30.01.2017 (i.e. long after expiry of the time limitation laid down in Section 10(3)). Thus, the bar laid down in Section 10(3) of the FTO Ordinance is attracted. The FTO has rejected the complaint in another case (Complaint No. 000715/2016 M/s Mumtaz Electric Works) being time barred as laid down in Section 10(3) of the FTO Ordinance.

10. The Agency has prayed that the impugned decision/ findings dated 05.09.2017 of FTO given in Complaint No. 0000024/2017 may graciously be set aside and during the pendency of this Representation, implementation on the recommendations may be stayed.

11. On the other hand, the Complainant has not filed comments against the instant representation of Agency despite issuance of letters on 29.9.2017 and 10.10.2017 by this Secretariat.

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 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 claims/ compensation due for all tax years after proper verification and confirmation of tax payments u/ss 234 & 235 of the Ordinance 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.

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)

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The Chairman,  
Federal Board of Revenue,  
Islamabad.

No. 159/FTO/2017 dated 05.01.2018

Copy for information to:

1. Mr. Bashir Ahmad, M/s Tajammal Commission Shop, Hafizabad Road, Pindi Bhattian, Hafizabad.
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)