

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

Federal Board of Revenue

Versus

Mr. Zulfiqar Ali, Sargodha

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS /
RECOMMENDATIONS DATED 6.11.2018 PASSED BY THE FTO IN COMPLAINT NO. 1150/LHR/IT/2018**

Kindly refer to your representation dated 06.12.2018 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 06.12.2018 has been filed by the FBR/Agency, against the findings of the FTO dated 06.11.2018, whereby it has been held that:

"FBR to direct the Commissioner-IR, BTB RTO, Sargodha

- i. To recall the impugned order dated 29.05.2017 and decide the same afresh after providing opportunity of hearing to the Complainant, as per law;
 - a. Initiate disciplinary proceedings against Mr. Muhammad Afzal, Notice Service who admittedly made fake report regarding service of notices which has resulted in undue harassment to the Complainant;
- ii. Issue warning to the Assessing Officer, to be watchful while relying on service of notices made through the sub-ordinate staff;
- iii. Detach bank account of the Complainant, as per law; and
- iv. Report compliance within 45 days."

2. The background of the case is that the Complainant an individual derives income from poultry business. According to the Authorized Representative (AR), when the Complainant attended office of the Inland Revenue Officer (IRO) BTB Bhalwal RTO Sargodha on 06.03.2018 in connection with notices for Tax Years 2012, 2013 and 2017 under Section 114(4) read with Section (1), he came to know about the provisional assessment order dated 29.05.2017 framed under Section 122C of the Ordinance for the Tax Year 2014. As neither notices nor the alleged order passed for Tax Year 2014 was ever served on him, the Complainant immediately applied vide letter dated 06.03.2018 alongwith paid copy of challan, amounting to Rs. 500 requesting for issuance of attested copy of the impugned order dated 29.05.2017. The Dept (provided certified copy of the impugned order) which was however, in the name of one 'Zeeshan' and not in the name of the Complainant. The Complainant again requested vide letter dated 05.04.2018 for copy of the order passed in the name of the Complainant as the order dated 29.05.2017 pertained to one 'Zehshan'. The AR argued that the Deptt has not only failed to issue certified copy of the assessment order pertaining to the Complainant but continued to attach his Bank account maintained in Habib Bank Limited (HBL) Chak No. 45/S.B Sargodha.

3. The Deptt raised preliminary objection regarding bar of jurisdiction under Section 9(2)(b) of the FTO Ordinance. Reference was also made to Hon'ble President's orders in C.No.60/2012-Law (FTO) dated 04.10.2013, C.NO.FTO/LHR10000697/FTO/2016 dated 16.01.2017 and C .No. 689/ISB/IT/2017. On merits, it was contended that on receipt of information from FESCO (WAPDA), the Deptt came to know that the Complainant had constructed Zeeshan Poultry Controlled Shed at Mouza Jan Muhammad Wala, Kot Momin. Accordingly, statutory notices for Tax Years 2014, 2015 and 2016 were issued under Section 114 (4) read with Section 116 of the Ordinance and were properly served on the business premises of the Complainant. As compliance was not made, Show Cause Notices (SCNs) were issued for Tax Years 2014 to 2016 under Section 122C of the Ordinance vide letters dated 05.05.2017 seeking compliance by 18.05.2017. The Complainant failed to make compliance of these notices; hence provisional order under Section 122C of the Ordinance was passed creating tax demand of Rs 7.679 million. Subsequently, the provisional order dated 29.05.2017 was served on the said business premises. The stance of the Complainant that impugned assessment order was not in his name, therefore, did not relate to him is factually incorrect. The provisional assessment was framed in the business name and an attested copy whereof was already provided to him. The Complainant, however, failed to make compliance within the stipulated period of time; hence, the provisional order dated 29.05.2017 attained finality in terms of sub-Section (2) Section 122C of the Ordinance. Since, lawful tax demand was outstanding against the Complainant owner of Zeeshan Poultry Controlled Shed; hence an amount of Rs 0.365 million was

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recovered by attaching his bank account under Section 140 of the Ordinance. The stance of the Complainant at this stage that impugned order did not pertain to him, was just an afterthought story only to hoodwink the Deptt.

4. Averments of the parties have been perused by the learned FTO. Thus FTO issued the aforementioned findings.

5. The hearing of the case has been held on 21.05.2019. Mr. Osama Idrees DCIR RTO Sargodha and Mr. Faisal Mushtaq Dar Commissioner IR, RTO Sargodha has represented the FBR. On the other hand Mr. M. Sajjad Ashraf and Mr. Farhan Dawod Advocates have appeared on behalf of the Complainant.

6. The instant representation has been made by the FBR. The Agency has prayed that the recommendations of the Honourable Federal Tax Ombudsman made in the impugned decision dated 06.11.2018 are beyond jurisdiction, barred by limitation and no maladministration has been proved. Therefore, it has been prayed that by accepting this representation, the impugned recommendations / findings may be set-aside.

7. On the other hand, the learned Counsel for the complainant has urged that the instant representation of the FBR may be rejected being baseless/meritless and the impugned findings/recommendations of learned FTO may be upheld.

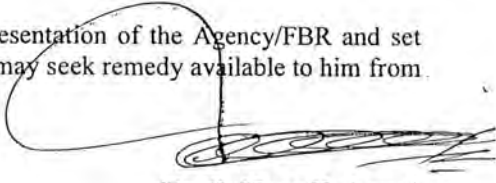
8. A thorough perusal of record and examination of all documents on record has been undertaken.

9. There is no doubt about the legal position that the jurisdiction of the FTO is barred under Section 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 is aggrieved of any action or inaction of the Agency, the complainant has the remedy to agitate the matter before the higher forum, the High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO. 'In' such circumstances, where remedy of appeal was available, FTO could not interfere with and could not pass orders under the alleged maladministration. 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. 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.

10. The perusal of the record indicates that the recommendations of the FTO are in excess of his jurisdiction. Undoubtedly no adverse remarks can be recorded in the PER of Officials or initiate disciplinary action without following the legal course.

11. 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 deserves to be accepted.

12. Accordingly, the Hon'ble President has been pleased to accept the representation of the Agency/FBR and set aside the impugned recommendations of learned FTO. However, the complainant may seek remedy available to him from the relevant forums under the law, if so desired.


(Dr. Zulfiqar H. Awan)
Director General (Legal)

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The Chairman,
Federal Board of Revenue, Islamabad.

No.58/FTO/2018, dated 16.09.2019

Copy for information to:

1. Mr. Zulfiqar Ali, R/o Mall of Sargodha, University road, Sargodha.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. The Commissioner Inland Revenue, Regional Tax Office, Sargodha.
4. Mr. Farhan Dawood Khan, Advocate High Court, House No.4, Civil Lines, Opposite Anti Terrorism court, Baber road, Sargodha.
5. Master file.

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(Dr. Zulfiqar H. Awan)
Director General (Legal)