

President's Secretariat (Public)
 Aiwan-e-Sadr
 ISLAMABAD

*Federal Board of Revenue
 Versus
 Mr. Sadiq Akbar, Shangla*

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS /
 RECOMMENDATIONS DATED 29.03.2019 PASSED BY THE FTO IN COMPLAINT NO. 0231, 233 &
 234/PWR/IT/2019**

Kindly refer to your representation dated 29.04.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 29.04.2019 has been filed by the FBR/Agency, against the findings of the FTO dated 29.03.2019, whereby it has been held that:

"The FBR to:

- i. **Direct the Commissioner-IR Mardan to complete the verification process and dispose of the Complainant's refund applications for Tax Years 2010, 2011 and 2014, after providing him opportunity of hearing, as per law; and**
- ii. **Report compliance within 45 days."**

2. The background of the case is that the Complainant resident of District Shangla located in ex-PATA derives income from franchise of M/s Telenor Pakistan (Pvt) at Shangla. The complainant filed returns of income for Tax Years 2010, 2011 & 2014 under Section 114(1) of the Income Tax Ordinance, 2001 and claimed refund amounting to Rs. 0.480 million, Rs. 0.957 million and Rs.1.662 million respectively. According to the Authorized Representative (AR), the Complainant had filed refund applications for Tax Years 2010 and 2011, as evident from Deputy Commissioner-IR Enforcement and Compliance-XVII RTO Peshawar's letter dated 12.07.2012 and for Tax Year 2014 copy thereof had been filed. However, despite repeated efforts of the Complainant, the department failed to pass orders under Section 170(4) of the Ordinance, within the stipulated time. The complainant, thus filed complaint before the learned FTO.

Before the FTO the stance of the FBR was that:-

"It was contended that income of the Complainant was from the taxable area as M/s Telenor Pakistan, the principal company, which deducted tax under Section 233 of the Ordinance from the Complainant, was based at Islamabad and that tax so withhold is final tax liability, under Section 169 of the Ordinance. It was contended that in an identical case operation of order of Hon'ble Peshawar High Court, declaring income of petroleum dealer based at ex-PATA as exempted, was suspended by the Hon'ble Supreme Court of Pakistan, for reconsideration to determine whether the Hon'ble Supreme Court's order in Gul Cooling Oil reported as (2008)97 Tax 125 was applicable in the said case. Moreover, on representation by the department Findings / Recommendations in complaint Nos. 0157 to 0160/PWR/IT/2018 involving similar facts had been set aside by Hon'ble President of Pakistan.

The Authorized Representative (AR) contended that the complainant is a bonafide resident of non-taxable area where he runs business on commission basis and, therefore, his income is exempted from levy of tax. The Departmental Representative (DR) argued that income had accrued to Complainant from taxable area, therefore, it is not exempted. He further stated that the instant complaint is not liable to be accepted in the light of findings of the Hon'ble President of Pakistan on departmental representations, in cases of similar nature."

Hence this representation by the FBR.

4. The hearing of the case has been held on 27.08.2019. Mr. Aslam Pervez, Asstt Commissioner has represented the FBR. On the other hand, Mr. Sadiq Akbar Complainant himself has appeared. Both sides have been afforded the opportunity of hearing.

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5. There can be no cavil that Section 9(2)(b) of the Act bars the jurisdiction of the FTO 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 as 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 had the remedy to avail under the law. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. A similar representation (No.15/FTO/2018 –C.No.0157, 0158, 0159 & 0160 /PWR / IT /2018) has already been dealt with by this office, setting aside the order of the FTO vide order dated 13.06.2018.

6. In such circumstances, FTO could not interfere with the matter of assessment of tax and interpretation of law. Thus the FTO having exceeded the ambit of jurisdiction, 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 before the relevant fora under the law, if so desired.

7. Accordingly, Hon'ble President has been pleased to (a) accept the instant representation of the FBR-Agency and to (b) set aside the impugned findings/recommendations of learned FTO.

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

The Chairman,
Federal Board of Revenue,
Islamabad.

No.28/FTO/2019 dated 26.09.2019

Copy for information to:

1. Mr. Sadiq Akbar, Sadiqabad Butyal, Tehsil Alpuri, Madina Market Besham, Shangla.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad
4. The Commissioner (Inland Revenue), Mardan Zone, Mardan, Regional Tax Office, Peshawar.
5. Master file.

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