

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

Federal Board of Revenue
Versus
Syed Hammad Raza Zaidi, Karachi

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS/RECOMMENDATIONS DATED 07.11.2018 PASSED BY THE FTO IN COMPLAINT NO.1263/KHI/IT/2018

Kindly refer to your representation dated 07.12.2018 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 07.12.2018 has been filed by the Agency-FBR against the findings of the FTO dated 07.11.2018 whereby it has been held that:

"FBR to -

- (i) Direct the Commissioner-IR Zone-II, RTO-III, Karachi to cancel Order dated 29.06.2018 for Tax Year 2013 under Section 122A of the Ordinance;
- (ii) Initiate disciplinary proceedings against the ACIR C-Zone RTO Faisalabad for deliberately passing the impugned order for Tax Year 2013 without jurisdiction of the case; and
- (iii) Report compliance within 45 days for recommendation No. (i) and 90 days for No.(ii). "

2. Brief facts of the case are that the complaint has been filed in terms of Section (1) of the FTO Ordinance, 2000 against the order dated 29.06.2018 passed under Section 121(1)(d) read with Section 177(10) of the Income Tax Ordinance, 2001 (ITO, 2001) for Tax Year, 2013.

3. The complainant, a sole proprietor M/s Revenue Advisory Services, is registered with the RTO-III, Karachi since 2002. According to the complainant, although jurisdiction of his case rested with RTO-III Karachi, the Assistant Commissioner-IR, E&C, Unit-01, Corporate Zone (CZ) RTO Faisalabad issued Show Cause Notice dated 31.05.2018 without barcode requiring him to file return of income and wealth statement for Tax Year 2013 in terms of Section 114(4) read with Section 116(1) of the Ordinance. He contended that as he had already filed return of income for Tax Year 2013 with RTO-III, Karachi and had intimated the ACIR CZ Faisalabad vide letter dated 12.06.2018, about this fact supported by copy of TFD receipt, regarding filing of return for Tax Year 2013. The ACIR did not accept evidence of filing of return for Tax Year 2013 and issued another notice again without any barcode requiring him to file the above documents by 27.06.2018. The ACIR, after rejecting his plea completed the impugned proceedings for Tax Year 2013 under Section 121(1)(d) read with Section 177(10) of the Ordinance vide order dated 29.06.2018 by creating a huge tax demand of Rs. 9.548 million. He concluded that the impugned order dated 29.06.2018 has been passed without having jurisdiction and warrants cancellation.

4. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Chief Commissioner-IR (CCIR) RTO, Faisalabad submitted parawise comments of the Commissioner-IR C-Zone, Faisalabad dated 09.10.2018. At the outset, preliminary objection regarding bar of jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance was raised. Reliance was placed on the judgment of Lahore High Court, Lahore in W.P No. 5999/2017 (Shehzadi Polypropylene Industries Vs Federation of Pakistan etc). On merits, it was contended that the complainant was Director of the company namely M/s Aslam Chemical Industries Pvt Ltd vide NTN No. 1475641-2 which falls under the jurisdiction of FTO, Faisalabad contended that the FBR vide F.No. 57(2) Jurisdiction/ 2016/112841-R had notified that all cases of directors of companies registered in Faisalabad fall within the jurisdiction of RTO, Zone Faisalabad. It was further contended that as per profile of the company the complainant was a director of the company, having 10% share, therefore, and his jurisdiction lay with RTO, Faisalabad. Further contended that amended assessment proceedings for Tax Year 2013 were completed under Section 121(1) read with Section 177(10) of the Ordinance, after providing opportunity of hearing. However, at the time of issuance of notice online e-portal did not accept the

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complainant's NTN for generation of barcode notice, hence keeping in view the time limitation, the notices were manually issued in good faith. It was averred that both replies filed by the complainant had been fully considered and incorporated in the body of the impugned order. The impugned order had been passed after due consideration and the same was appealable before appellate forum.

5. During hearing, the AR reiterated that he is a regular filer of income tax returns. He further reiterated that he also filed return of income for Tax Year 2013 manually on 15.10.2013 with TFD RTO-III Karachi. His jurisdiction was, however, wrongly changed to Faisalabad with effect from 26.03.2017. When this error was disclosed, the FBR transferred back his jurisdiction to RTO-III, Karachi with effect from 24.03.2018. The DR contended that the complainant had been assessed at Karachi from Tax Year 2002 to 2017. His jurisdiction was, however, transferred to RTO, Faisalabad vide CCIR, CRTO, Karachi's letter dated 26.02.2017. However, on pointation of the complainant, the CCIR, RTO-III, Karachi requested the CCIR, Faisalabad vide letter dated 19.03.2018 to transfer back case of the complainant as his jurisdiction lies with RTO-III, Karachi. Accordingly, the FBR changed the complainant's jurisdiction from CRTS Faisalabad to RTO-III, Karachi with effect from 24.03.2018. He contended that after shifting of jurisdiction the complainant had been issued a notice under Section 122(9) of the Ordinance for Tax Year 2014 and matter is under process. The DR thus concerned that Show Cause Notice dated 31.05.2018 issued by the ACIR, C-Zone, RTO, Faisalabad was without lawful jurisdiction as on this date, the case of the complainant already stood transferred to RTO-III, Karachi. The averments of both the parties have been given due consideration and available record perused. Thus, FTO has issued aforementioned findings.

6. The instant representation has been filed by the Agency. The Agency has stated that it is established principle of law that nobody can be condemned unheard and this principle has been quoted by higher courts in plenty of judgments. Therefore, the findings of the FTO against the assessing officer who was not made a party to the complaint are in violation of this established principle of law. The impugned order has been passed in good faith while observing due diligence and, therefore, in terms of Section 227, of the Income Tax Ordinance, 2001 no proceedings can be carried out against any action done in good faith.

7. The Agency has pleaded that admission of the instant complaint by the FTO is in violation of Regulation No. 5 of the FTO Investigation and Disposal of Complaints Regulations, 2001 and Section 9(2)(b) of the FTO Ordinance, 2000. The said assessment order was appealable before Commissioner Inland Revenue in terms of Section 129 of the Income Tax Ordinance, 2001, reviewable under Section 122A and revisable under Section 221 of the ITO, 2001.

8. The Agency has asserted that the FTO in Para No. 6 of the findings has incorrectly overruled the preliminary objection regarding bar of jurisdiction raised under Section 9(2)(b) of FTO Ordinance by declaring that the grievance of the complainant does not relate to assessment of income and wealth but against the order passed without lawful jurisdiction. This is against the already settled principles of law by the higher courts. The Supreme Court in judgment reported as 53 Tax 67 = 1985 PTCL 446 = 1985 PLD 271 has maintained the view that the matters related to territorial jurisdiction are appealable before appellate authorities. The Lahore High Court in a recent judgment vide ICA No. 92401 of 2017, dated 23.10.2017 reported as 2018 PTD 419 has maintained that jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance.

9. The Agency has taken ground that the impugned order passed by the Assessing Officer was not a deliberate act on his part rather it was an act in good faith keeping in view of conflict related to territorial jurisdiction of the taxpayer which is evident from the following facts:

- i. The impugned assessment has been made through a speaking order by rightfully assuming the jurisdiction as per jurisdiction order by the Board vide F.No. 57(2) Jurisdiction/2016/11284/R whereby the jurisdiction of the taxpayer/ complainant falls in RTO, Faisalabad;
- ii. The taxpayer has unlawfully secured transfer of jurisdiction from RTO Faisalabad to RTO-III Karachi by concealing his dictatorship status in his income tax registration profile. Whereas from the income tax profile and return for tax year 2013 of the company namely M/s Aslam Chemical Industries (Pvt) Ltd (falling in territorial jurisdiction of TRO Faisalabad) the taxpayer is director of the company and as such the jurisdiction of the taxpayer was falling in RTO, Faisalabad;

- iii. The jurisdiction of the said case was transferred by Corporate RTO Karachi to RTO Faisalabad alongwith with a complaint filed against the taxpayer by a whistleblower. The impugned order has been passed in light of the said complaint in good faith by rightfully assuming the jurisdiction;
- iv. The copy of return for tax year 2013 presented by the taxpayer during the proceedings under Section 121 was not a reliable document because of the fact that it was not carrying the signatures of the taxpayer and any receipt diary number. Further the said return is not verified from ITMS. Even today as per ITMS profile no return for tax year 2013 is in field as deemed assessment and, therefore, in the absence of any return for tax year 2013 proceedings under Section 121 were going to be barred by time on 30.06.2018. Therefore, the Assessing Officer has issued order under Section 121 perfectly in accordance with law in good faith while observing due diligence;
- v. The good faith intention of the Assessing Officer is evident from the fact that it was categorically mentioned in the order for apprising the taxpayer that this order is appealable before CIR Appeals within 30 days of receipt of this order.

10. The Agency has contended that the FTO in his findings has not discussed the authenticity of the return presented by taxpayer despite the fact that the issue of authenticity was discussed during proceeding as reported by the DR. The taxpayer has failed to file appeal before Commissioner-IR Appeals within 30 days of receipt of order and filing of appeal was barred by time on 09.09.2018. After attaining finality, the taxpayer had filed the complaint on 22.09.2018 before the FTO. The complainant has concealed the fact from the FTO that he had requested the Commissioner-IR, Corporate Zone, RTO Faisalabad to exercise his review jurisdiction under Section 122A of the ITO, 2001 and that the said request was turned down on merit vide C.No. 419 dated 09.10.2018 .

11. The Agency has prayed that the findings of the FTO in respect of disciplinary proceedings against the Assessing Officer may be declared unlawful, without lawful authority, void ab initio and as such of no legal effect.

12. On the other hand, the Complainant has filed his written comments on 21.12.2018 against the instant representation of FBR and supported the impugned recommendations/findings of learned FTO with the request that the instant representation of the Agency may be rejected by the appellant forum.

Analysis/Conclusion

13. After perusal of record and examination of all documents, it has been noted 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.

14. The particular 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. It has been settled by the Supreme Court of Pakistan in case of Mst. Kaniz Fatima reported in 2001 SCM that where a particular statute provides self contained machinery for determination of questions arising under R 1493, and law provides a remedy by appeal or revision to another forum fully competent to give any relief, the statute the contrary by any other forum is bound to produce a sense of distrust in statutory forums and any indulgence to 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.

16. It is worth mentioning that the recommendations of the FTO are in excess of his jurisdiction. Undoubtedly no adverse remarks can be recorded in PER of Officers i.e. Chief Commissioner, Commissioner and IRAO without following the legal course of action and without giving them an opportunity of hearing. Only the competent authority can initiate proceedings against officers and adverse action can be taken after following a proper legal procedure. As per law, FTO has limited scope to identify maladministration and debarred from interpreting the law as it is function of the courts. Thus FTO has no jurisdiction to intervene in the matters where remedy by filing an appeal as a matter of right is available. Thus FTO has no power to interfere in the service matter and has no authority that any adverse observations be recorded in the PERs or to initiate unnecessary disciplinary proceedings against any officer belonging to tax machinery under the garb of maladministration.

17. 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/maintainable within the four corners of law. Consequently, the Agency's representation is liable to be accepted and the impugned findings are required to be set aside.

18. Accordingly, the Hon'ble President has been pleased to (a) accept the Representation of FBR-Agency and to (b) set aside the impugned findings/recommendations of FTO. However, the complainant can seek remedy available to him from the relevant forums under the law, if so desired.

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

The Chairman,
Federal Board of Revenue,
Islamabad.

No.57/FTO/2018 dated 16.08.2019

Copy for information to:

1. Syed Hammad Raza Zaidi, M/s Revenue Advisory Services, C-20, Block-5, Gulshan-e-Iqbal, Karachi.
2. The Commissioner IR, RTO, Faisalabad.
3. The Registrar, Federal Tax Ombudsman's, Islamabad
4. The Chief (Legal), Federal Board of Revenue, Islamabad.
5. Master file.

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

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