

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

Federal Board of Revenue  
Versus  
Mr. Rauf Ahmed, Islamabad

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS  
/ RECOMMENDATIONS DATED 04.06.2018 PASSED BY THE FTO IN COMPLAINT NO.  
716/ISB/IT/2018**

This is with reference to your representation dated 29.06.2018 and to convey that the Honourable President has considered and pleased to pass the following order:

2. This Representation dated 29.06.2018 has been filed by the FBR—the Agency against the findings of the FTO dated 04.06.2018 whereby it has been held:

“FBR to:

- (i) **Direct the Zonal CIR to allow appeal effect in terms of Section 124(4) of the Ordinance and thereafter process and dispose of the complainant's refund application dated 23.08.2017 and his request for additional payment for delayed refund as per law; and**
- (ii) **Report compliance within 45 days”.**

3. Brief facts of the case are that the complaint has been filed under Section 10(1) of the FTO Ordinance, 2000 against delay in allowing appeal effect to the Commissioner-IR (Appeals) Islamabad's order dated 30.03.2016 for Tax Year 2015.

4. The Complainant, an individual, engaged in execution of contracts and providing services. According to AR, the Inland Revenue Officer (IR), RTO Islamabad initiated proceedings against the complainant for Tax Year 2015 under Section 161 read with Section 205 of the Income Tax Ordinance, 2001 and passed order dated 30.03.2016 creating a huge tax demand against the complainant, amounting to Rs. 1.861 million. The complaint assailed the said order before the CIR (Appeals-II) Islamabad who granted stay for 15 days or till the disposal of main appeal whichever was earlier. The appeal was still pending when the IRO after expiry of 15 days i.e. on 16.03.2017 attached the complainant's bank account and recovered disputed tax demand of Rs. 1.861 million. The CIR (Appeals-II) Islamabad, however, annulled the order dated 30.03.2016 vide judgment dated 30.05.2017. The AR prayed that as the tax demand created as a consequence of the order dated 30.03.2016 has been deleted, the amount so recovered from the bank account of the complainant become refundable. For failure of the department to refund the same, the complainant has filed this complaint requesting for disposal of his refund claim. He has also claimed additional payment for delayed refund.

5. The complaint was forwarded for comments to Secretary, Revenue Division in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013 (FOIR 2013). In response thereto, the FBR vide letter dated 25.05.2018 submitted comments of CIR-II, RTO Islamabad dated 21.05.2018. It was contended that since the period of stay expired on 16.03.2017 the department had rightly collected the tax demand by attaching bank account of the complainant under Section 140 of the Ordinance read with Rule 68 of the Income Tax Rules, 2002 (the Rules). It was further contended that refund cannot be issued as against the appellate order dated 30.05.2017 the department has filed an appeal before the Appellate Tribunal Inland Revenue on 21.08.2017 where matter is sub-judice. Arguments of the parties considered and available record examined by the FTO. Thus, FTO has issued aforementioned findings.

6. The instant Representation has been filed by the Agency. The Agency has taken ground that in terms of Section 9(2)(a) of FTO Ordinance, 2000 the FTO has no jurisdiction to investigate or inquire in to the matters which are sub-judice before a court of competent jurisdiction or tribunal or board or authority on the date of receipt of a complaint, reference or motion by him. In terms of Section 9(2)(b) of the Ordinance, FTO has also no jurisdiction to investigate or inquire into the matters related to the assessment of income, determination of liability of tax, interpretation of law, rules and regulations relating to the said assessment/ determination in respect of which legal remedies of an appeal, review or revision are available under the relevant legislation.

7. The Agency has stated that the matter involves the determination of tax liability and refundable amount on account of tax. Such matter are appealable before the Commissioner (Appeals), Appellate Tribunal, 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 case the complainant was aggrieved of any action or non action on the part of the department, he has the remedy to file an appeal at appropriate forum under the relevant law. The interpretation of law has also been

POF W/O 10/5

17

upheld by the President in complaint number FTO-HQR/0000647/2016, NO. 124/Islamabad/IT(94)/1153/2015 and FTO-FTD/0000674/2016.

8. The Agency has pointed out that it has been settled by the Supreme Court in the case of Mst. Kaniz Fatima reported as 2001 SCMR 1493, that where a particular statute provides self contained machinery for determination of question 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 forum and Writ Petition will not be maintainable without first availing the alternate statutory legal remedy. The FTO has no jurisdiction to direct to allow appeal effect in terms of Section 124(4) of the Income Tax Ordinance, 2001 and thereafter process refund application dated 23.08.2017 and is request for additional payment for delayed refund as per law. Instant case is a legal issue involving determination of tax liability and interpretation of law and thus is beyond the jurisdiction of FTO.

9. The Agency has pleaded that in order to establish the maladministration of FTO has relied upon Section 2(3)(ii) of the FTO Ordinance, 2000. For ease of reference the said Section is reproduced hereunder:

".....(3) 'maladministration, includes:

(b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;....."

10. The Agency has emphasized that the case of the taxpayer as stated above is sub-judice in Appellate Tribunal Islamabad and its decision is yet to come. Further, the FTO has no jurisdiction in the instant case to give any verdict. Hence, any action of the department does not fall in the bracket of maladministration. Without prejudice to the above the instructions of the FTO to give appeal effect to CIR (A) order in terms of Section 124(4) of the Income Tax Ordinance, 2001 is against the expressed provision of sub section 4 of Section 124 as no direct relief is allowed to the taxpayer by CIR (A).

11. The Agency has asserted that annulment cannot be termed as direct relief rather it requires fresh assessment reliance to advantage is placed on the ATIR, Lahore Bench, Lahore decision vide ITA No. 1057/LB/2010 dated 02.11.2011 in the case of the CIR (RTO) Sialkot Vs Mr. Muhammad Yasin S/o Sadiq Ali, through Mst. Shehnaz Kausar W/o Muhammad Yasin (Agent, Noor Kot, Shakargarh and Lahore High Court, Lahore judgment vide Writ Petition No. 19101 of 2016 dated 25.05.2017 in the case of Malik Faisal Imran Vs. Federation of Pakistan etc. The directions of FTO tantamount to interpretation of law and relate to assessment of income and determination of liability of tax which falls outside the purview of the FTO in terms of Section 9(2)(b) of FTO Ordinance, 2000.

12. The Agency has requested that the findings/ recommendations of FTO may be vacated/ set aside.

13. On the other hand, the complainant has not filed any written comments against the instant representation of FBR despite issuance of notices on 3.7.2018 and 17.7.2018 by this Secretariat.

14. After perusal of record and examination of all documents, it is pointed out that the Agency has categorically mentioned that the taxpayer's turnover for the tax year 2011 and 2014 was Rs. 65,441,077/- and Rs. 101,448,921/- which was well above threshold of Rs. 50(million) and he was rightly treated as a withholding agent under the provision of section 153(7)(i) of the Income Tax Ordinance, 2001. Accordingly, **the department against the order of CIR(A-II) filed appeal in the ATIR Islamabad on 21-08-2017 which is still pending.** On the contrary the initial complaint was filed on 10.5.2018 before FTO by the complainant.

15. It is not out of place to be mentioned that the particular matter was sub-judice before the tribunal when complaint was entertained by the FTO. Section 9(2)(a) of the FTO Ordinance 2000 provides that FTO shall not have jurisdiction to investigate or inquire into matters which are sub-judice before a court of competent jurisdiction or tribunal or board of authority on the date of the receipt of a complaint, reference or motion by him.

16. 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.

17. 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.

18. 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.

19. In such circumstances, FTO shall not have jurisdiction to investigate or inquire into matters which are subjudice before a court of competent jurisdiction or tribunal or board of authority on the date of the receipt of a complaint, reference or motion by him. 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.

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

The Chairman,  
Federal Board of Revenue,  
Islamabad.

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

**No. 34/FTO/2018 dated 06.05.2019**

Copy for information to:

1. Mr. Rauf Ahmed, R/o House No. 02, Street No. 14, DHA, Phase II, Sector J, Islamabad.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Master file.

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