

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

Federal Board of Revenue
Versus
M/s Mehar Packages (Pvt) Ltd, Multan

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 18.10.2018 PASSED BY THE FTO IN COMPLAINT NO. 1199/MLN/IT/2018

I am directed to refer to your representation No. 4(1199)S(TO-I)/2018 dated 13.11.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 13.11.2018 has been filed by the Agency-FBR against the findings of the FTO dated 18.10.2018 whereby it has been held:

“FBR to -

- i. Direct the Commissioner-IR Corporate Zone Multan to issue balance refund for Tax Year 2017 alongwith additional payment for delayed refund under Section 171(2)(c) of the Ordinance;
- ii. Call for explanation of the Commissioner-IR Corporate Zone Multan for deliberate falsification of the facts and take appropriate disciplinary action against him; and
- iii. 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 non issuance of refund for tax year 2017 alongwith additional payment for delayed refund. Precisely, the complainant a private limited company, engaged in manufacturing of plastic products/ packages, e-filed return of income for tax year 2017 under Section 114(1) of the Income Tax Ordinance, 2001 (ITO, 2001) and claimed refund amounting to Rs.10.709 million. The refund arose on account of excess tax deducted on imports under Section 148, on supply of goods under Section 153(1A), on cash withdrawals under Section 231A and on electricity bills under Section 235 of the Ordinance. The refund application was e-filed on 31.12.2017. The same was also submitted manually in the office of DCIR, E&C Unit-03, Corporate Zone, Multan alongwith necessary documentary evidence on 23.04.2018. However, despite repeated efforts of the complainant the department failed to pass order under Section 170(4) of the Ordinance, within the stipulated time.

4. The complaint was sent for comments to the 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. In response, thereto the Chief Commissioner-IR, RTO, Multan submitted vide letter dated 19.09.2018 comments of the Commissioner-IR (CIR), Multan Zone dated 19.09.2018. It was contended that refund for tax year 2017 could not be processed as the complainant failed to furnish supporting evidence such as CPRs for verification. Added that the complainant provided copies of CPRs in the month of June, 2018 where after, the refund for tax year 2017 to the extent of verification amounting to Rs.2.0 million was adjusted against advance tax liability for tax year 2019. However, as soon as verification was completed, the balance refund for tax year 2017 would also be settled as per law.

5. During hearing, the AR vehemently rebutted the department's stance, contending that supporting evidence was produced before the department and after verification refund for tax year 2017 amounting to Rs. 10.709 million had already been determined vide order dated 27.06.2018 under Section 170(3) of the Ordinance. However, instead of issuing the total refund, the department has adjusted an amount of Rs. 2.0 million against the advance tax for tax year 2019 and kept the balance without any rhyme or reason. When confronted, the DR admitted this fact. He, however, could not justify the delay in issuance of balance refund. The Unit Officer present during the hearing contended that the case has now been forwarded to the CIR, Corporate Zone, Multan for administrative approval vide letter dated 05.10.2018. As soon as approval is received the balance refund would be settled expeditiously, as per law.

6. The parties have been heard and record perused by FTO. Thus, the Federal Tax Ombudsman has issued the aforementioned findings.

7. The instant representation has been filed FBR-Agency. The Agency has underscored that the complainant lodged complaint against non issuance of refund for the tax year 2017 under Section 170(4) of the ITO, 2001 whereas the department had already processed the refund claim and certain portion was adjusted against its liability vide order dated 27.06.2018 under Section 170(3) of the ITO, 2001, whereas the administrative approval of refund

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was granted on 10.10.2018 by the Commissioner-IR in response to the Additional Commissioner, E&C Range, Corporate Zone, RTO, Multan's letter No. 394 dated 08.10.2018.

8. The Agency has pleaded that the Commissioner-IR performed its duties as provided in ITO, 2001 and as per jurisdiction order issued by the FBR. Additional Commissioner-IR & Deputy/ Assistant Commissioner-IR assist the Commissioner-IR in making decisions and reporting onwards on the strength of powers delegated to them. In the instant case, the FTO Complaint No.1199/MLN/IT/2018 filed by M/s Mehar Packages (Pvt) Ltd, Multan was received on 06.09.2018 through the office of the Commissioner-IR, RTO, Multan vide its office letter No. C.No. 1857 dated 06.09.2018. Parawise comments thereof were called for vide letter No.1065 dated 07.09.2018 from concerned Field Officer i.e. ACIR, E&C, Unit-03, Corporate Zone, RTO, Multan who submitted parawise comments in the subject case vide letter No. 281 dated 18.09.2018 duly endorsed by the Additional Commissioner-IR, E&C Range, Corporate Zone, RTO, Multan vide letter No. 343 dated 19.09.2018, wherein reported in para-3:

"refund cannot be determined without availability of CPRs and verification of the same from the concerned quarters. In the instant case, taxpayer provided copies of CPRs in the month of June, 2018. Accordingly, adjusted the amount to the extent of verification i.e. Rs.2,000,000/-."

On the basis of officer's report and endorsed thereof by the Additional Commissioner-IR concerned, the same was reported which proves that no false account in comments dated 19.09.2018 submitted by this office were given deliberately.

9. The Agency has contended that in para-4 of the parawise comments, the ACIR further reported:

"refund is under process and as soon as administrative approval is granted by the Commissioner-IR subject to verification, the refund will be issued forthwith".

As the refund for administrative approval had not been received in office of the Agency at that time, thus disagreeing with the report of the officers, it was reported that 'refund is under process. As soon as the tax payments are verified, the refund shall be issued'. This statement is evident from ACIR's letter No. 281 dated 18.09.2018. It clearly shows that there was no element of falsification or deliberate misstatement on the part of the Agency.

10. The Agency has asserted that the ACIR, E&C Unit-03, Corporate Zone, RTO, Multan sought administrative approval for refund in the instant case made vide letter No. 242 dated 05.10.2018 duly endorsed by the Additional Commissioner-IR, E&C Range, Corporate Zone, RTO, Multan vide letter No. 394 dated 08.10.2018, the Commissioner-IR granted approval vide letter No. 1513 dated 10.10.2018.

11. The Agency has pointed out that the FTO recommended to issue balance refund for the tax year 2017 alongwith additional payment for delayed refund under Section 171(2)(c) of the Ordinance. Refund for administrative approval was received in the office of the Commissioner-IR on 09.10.2018 and the same has been approved on 10.10.2018. subsequently, ACIR has issued refund voucher/ cheque No. 000202 dated 15.10.2018 accordingly copy of the voucher has also been produced before the Advisor to FTO during the hearing on 04.10.2018 by the ACIR. Therefore, no question of delayed payment arises here, as the process of refund issuance could be completed after administrative approval of the Commissioner-IR and the due date stated after that date.

12. The Agency has illustrated that the FTO was not justified in terms of Section 9(2)(b) of the FTO Ordinance, 2000 to recommend explanation and disciplinary action against the officers/ officials for actions done in good faith in discharge of their official functions. The President has already held in number of judgment against FTO cases that FTO has limited scope to identify maladministration and FTO has no powers to interfere in the service matters and no authority to give adverse observations/ recommendations under the garb of maladministration reliance is placed upon the following:

- i. FBR Vs M/s Croplands (Pvt) Ltd, Multan in FTO Complaint No. FTO-MLN/0000851/16;
- ii. FBR Vs M/s Fatima Medical Care (Pvt) Multan in FTO Complaint No. FTO-MLN/0000506/16 & No. FTO-MLN/0000698/16;
- iii. FBR Vs M/s Dr. Ashiq Hussain Malik, Multan in FTO Complaint No. 108/FSD/17(76)/846/2014

13. The Agency has prayed that the observations, findings and recommendations of the FTO in the aforesaid complaints may be set aside in the following points:

- i. No maladministration is involved in the instant case;
- ii. Refund had been sanctioned well in time and before FTO issued recommendations;
- iii. No additional payments required as the refund has been issued timely as discussed in grounds;
- iv. Recommendations of the FTO regarding explanation and disciplinary actions are barred under Section 9(2)(b) of the FTO Ordinance, 2000.

14. On the other hand, the complainant has filed written comments on 27.11.2018 through Akhtar Javed, Advocate High Court with the prayer that the Honourable President is requested to reject the representation and the petitioner Commissioner and he may be directed to sanction additional payment for delayed refund u/s 171 of the Ordinance since the legitimate amount of refund was unlawfully withheld by the petitioner and it was sanctioned only when the respondent company filed the titled complaint before the learned FTO. The respondent does not press the recommendation of the learned FTO for calling explanation and taking disciplinary action against the petitioner Commissioner since it was not included in the prayer made before the learned FTO and the learned FTO on his own made the subject recommendation prima facie taking into account the merits of the case and unlawful action of not sanctioning the due amount of refund which was allowed only on interference of the office of the learned FTO.

Analysis/Conclusion

15. After perusal of record and examination of all documents, it has been noted that the Agency has pointed out that the FTO recommended to issue balance refund for the tax year 2017 alongwith additional payment for delayed refund under Section 171(2)(c) of the Ordinance. Refund for administrative approval was received in the office of the Commissioner-IR on 09.10.2018 and the same was approved on 10.10.2018. Subsequently, ACIR has issued refund voucher/ cheque No. 000202 dated 15.10.2018 accordingly a copy of the voucher was produced before the Advisor to FTO during the hearing on 04.10.2018 by the ACIR. Therefore, no question of delayed payment has arisen, as the process of refund issuance could be completed after administrative approval of the Commissioner-IR and the due date stated after that date.

16. It is pointed out that partial findings of FTO such as to "direct the Commissioner-IR Corporate Zone Multan to issue balance refund for Tax Year 2017" have already been implemented by FBR as mentioned supra as ACIR issued refund voucher/ cheque No. 000202 dated 15.10.2018 to the complainant and a copy of the peculiar voucher was also produced before the Advisor to FTO during the hearing on 04.10.2018 by the ACIR. Therefore, the Agency has rightly pointed out that there is no question of delayed payment arose, as the process of refund issuance completed after administrative approval of the Commissioner-IR within the due date.

17. In terms of Section 9(2)(b) of the FTO Ordinance 2000, the FTO has no jurisdiction to investigate or inquire into the matters which relate 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.

18. 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 is 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. FTO 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.

19. 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.


20. It is an admitted position that the matter involves factual controversies regarding determination of tax liability and refundable amount on account of tax as well as additional payment for delayed refund. 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.

21. It is pertinent to mention 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 of competent jurisdiction. 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 including calling for disciplinary action of various officers just under the garb of maladministration.

22. 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 is liable to be accepted. However, the complainant can seek remedy available to him from the relevant forums under the law.

23. Accordingly, the President has been pleased to accept the instant Representation of FBR concerning with (a) additional payment to the complainant and (b) calling for disciplinary action against Commissioner-IR as well as (c) to set aside the impugned findings/recommendations of FTO.



(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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The Chairman,
Federal Board of Revenue,
Islamabad.

No. 54/FTO/2018 dated 08.01.2019

Copy for information to:

1. M/s Mehar Packages (Pvt) Ltd, 160-A, Sahmsabad. Multan.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. The Chief (Legal-1), Federal Board of Revenue, Islamabad.
4. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)