

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

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Federal Board of Revenue  
Versus  
Ms. Naheed Shamim Nuzhat, Multan

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 21.02.2018 PASSED BY THE FTO IN COMPLAINT NO. 816/MLN/IT/2017**

I am directed to refer to your representation No. 4(816)S(TO-1)/2017, dated 16.03.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 16.03.2018 has been filed by the FBR/Agency, against the findings of the FTO dated 21.02.2018, whereby it has been held that:

"FBR to-

- i. Direct the Commissioner Corporate Zone, RTO, Multan to give appeal effect to the order of the CIR (Appeals) and dispose of the complainant's claim of refund as per law; and
- ii. Report compliance within 45 days."

3. The brief facts of the case are that the complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against non-payment of refund amounting to Rs. 0.175 million consequent upon appellate order. Precisely, the Complainant enjoying profit on investment, failed to file return of income for Tax Year 2010. Notice under section 114(4) of the Income Tax Ordinance, 2001 (the Ordinance) was issued which remained un-complied with. Consequently, provision assessment under Section 122C of the ordinance was framed on 29.06.2015 at a net income of Rs. 1.000 million. On 23.01.2017, the department attached the bank account of the Complainant and withdrew tax demand created at Rs. 0.175 million. Being aggrieved, the Complainant filed an appeal on 30.01.2017 whereby the CIR (Appeals), Multan vide his order No. 835 dated 03.03.2017 disposed of the complaint with the observation that "the provision assessment is not sustainable in the eye of law. The department is directed to proceed according to law after providing reasonable opportunity of being heard to the appellant. Consequently, upon the appellate order the tax liability being Nil, the Complainant filed an application for refund of Rs. 0.175 million followed by 4 reminders on 27.09.2017, 10.10.2017, 12.10.2017 and 21.10.2017 but the claim of refund was not settled.

4. The complaint was sent for comments to the Secretary Revenue Division for departmental reply/comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsman Institutional Reforms act, 2013. In response, thereto, the department submitted its comments vide letter No. 6707 dated 05.12.2017. Preliminary objection was raised with regard to the jurisdiction of this office in terms of Section 9(2)(b) of the FTO Ordinance, on the plea that the issue relates to assessment of income and determination of tax liability and interpretation of law, therefore, the complaint is beyond the scope of jurisdiction of this forum, as the issue is appealable under the ordinance. It was further stated that the Complainant had filed the complaint before approaching higher authorities or filing any representation which is violation of procedure for filing of complaint as laid down in rule 3 of the Federal Tax Ombudsman Investigation & Disposal of Complaints Regulation, 2001.

5. On merits, it was stated that the Commissioner, Inland Revenue (appeals) had no jurisdiction for hearing against the order passed by the department under Section 122C of the Ordinance as envisaged in the Ordinance. Therefore, the order of annulment was void ab-initio and inoperative, in view of sub-section (1) of Section 127 of the Ordinance.

6. Both the parties heard and record perused by FTO. Thus, FTO has issued aforementioned findings.

7. The instant representation has been made by the FBR. The Agency has taken ground that the instant complaint is prima-facie lodged to take effect of the Commissioner-IR (Appeals), Multan's Order. Commissioner-IR (Appeals) has no jurisdiction over the cases wherein order passed by the department u/s 122C of the Income Tax Ordinance, 2001 u/s 127(1) ibid. The taxpayer filed income tax return for Tax Year 2010 after expiry of 45 days of receipts of order u/s 122C. The ordinance states under Sub-Section (2) of Section 122C.

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“The provisional assessment order completed under sub-Section (1) shall be treated as the final assessment order after the expiry of (forty-five) days from the date of service of the order of provisional assessment and provisions of this ordinance, shall apply accordingly.”

8. The Agency has mentioned that therefore, the demand created by the department stood established against the taxpayer and was recovered legally through attachment of Bank Account as per Income Tax Ordinance, 2001.

Reference case law:-

1. The Lahore High court in CIR Vs Islam-ud-Din & others PTD-914(1). The provisional assessment has to attain finality after the expiry of statutory period of sixty days, if the taxpayer failed to file tax return;
2. 2013 PTD (Trib.) 2233 it is provided that after the expiry of 60days from the date of service of order of provisional assessment, it will be deemed as final assessment order.

9. The Agency has pleaded that Hon'ble FTO could not assumed the jurisdiction as per Section 9(2)(a) of FTO Ordinance, 2000, of the cases which are subjudice before court of competent jurisdiction or Tribunal. In the alleged FTO complaint, the department has already filed 2<sup>nd</sup> appeal before the Appellate Tribunal Inland Revenue, Lahore vide C. No. CIR/RTO/CORP/ZONE/661 dated 23.08.2017 and the said appeal was still pending at the time of findings/recommendations given by the Hon'ble FTO. Hon'ble FTO has no jurisdiction as per Section 9(2)(b) of FTO Ordinance, 2000 in those cases where remedies of appeal, review or revision are available. In the instant complaint, the department has filed appeal under Section 131 of the Income Tax Ordinance, 2001, before submission of complaint filed before Hon'ble FTO.

10. The Agency has prayed that the findings as well as recommendations of the Hon'ble Federal Tax Ombudsman in complaint No. FTO/816/MLN/IT/2017 may be department has already filed 2<sup>nd</sup> appeal before the Appellate Tribunal Inland Revenue, Lahore which is still pending there.

11. On the other hand, the complainant has not filed any written comments against the instant representation of FBR despite issuance of notices on 22.3.2018 and 2.4.2018 by this Secretariat.

12. After perusal of record and examination of all documents, it has been observed that the complaint by the complainant was filed in FTO on 13.11.2017. On the contrary, the department had already filed 2<sup>nd</sup> appeal before the Appellate Tribunal Inland Revenue, Lahore vide C. No. CIR/RTO/CORP/ZONE/661 dated 23.08.2017 and the said appeal was still pending at the time of findings/recommendations given by the Hon'ble FTO. In the circumstances, Section 9(2)(a) of the FTO Ordinance 2000 provides that 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.

13. 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.

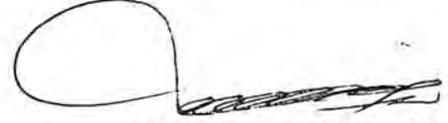
14. It is an admitted position that the matter involves the determination of tax liability and refundable amount on account of tax. Such matters are appealable before the Commissioner (Appeal), Appellate Tribunal (IR), the High Court and the Supreme Court. Where remedy of appeal is provided under the 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.

15. 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.

16. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law as well as wherein the matter is subjudice before forum/court of competent jurisdiction. 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.

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



**(Zulfiqar Hussain Awan)**  
**Director General (Legal Affairs)**

✓The Chairman,  
Federal Board of Revenue,  
**Islamabad.**

**No. 12/FTO/2018 dated 13.06.2018**

Copy for information to:

1. Ms. Naheed Shamim Nuzhat, House No. 181-A, Wapda Town, Multan.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file.



**(Zulfiqar Hussain Awan)**  
**Director General (Legal Affairs)**

**PRESIDENT'S SECRETARIAT (PUBLIC)**  
**AIWAN-E-SADR, ISLAMABAD**  
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Federal Board of Revenue  
 Versus  
 Malik Ifikhar Ahmed, Lower Dir

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS**  
**/ RECOMMENDATIONS DATED 15.03.2018 PASSED BY THE FTO IN COMPLAINT NO. 0157,**  
**0158, 0159 & 0160/PWR/IT/2018**

I am directed to refer to your representation No. 4(157)S(TO-I)/2018, dated 13.04.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 13.04.2018 has been filed by the Agency-FBR against the findings of the FTO dated 15.03.2018 whereby it has been held:

“FBR to direct:-

- (i) **Direct the Commissioner-IR Mardan to process and settle refund for Tax Years 2011 to 2014, as per law; and**
- (ii) **Report compliance within 45 days.”**

3. Brief facts of the case are that these identical complaints have been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against Regional Tax Office (RTO), Peshawar on account of failure of settle refund for Tax Years 2011 to 2014. All these complaints having identical issues are disposed of through single consolidated findings.

4. The Complainant, an individual, derives income from franchise of M/s Telenor Pakistan (Pvt) Ltd located at Timargarah which falls in the Provincially Administered Tribal Areas (PATA). According to the AR, the PATA is exempt from tax under the provisions of Article 247 of the Constitution of Islamic Republic of Pakistan, 1973. However, as the tax was deducted under Section 336 of the Income Tax Ordinance, 2001 (the Ordinance), the Complainant filed returns for Tax Years 2011, 2012, 2013 and 2014 under Section 114(1) of the Income Tax Ordinance, 2001 and claimed amounting to Rs.2.710 million, Rs. 2.953 million, Rs. 2.767 and Rs. 4.574 million as refund. He contended that refund applications were not required to be filed as held by this Forum in the cases cited as 2014 PTD 1554=110 TAX 15 and 2006 PTD 1580=91 TAX 305. Notwithstanding above, the Complainant also e-filed separate applications for refund for Tax Years 2011, 2012, 2013 and 2014 alongwith required copies of tax deduction certificates but the Department has failed to issue due refund.

5. The complaints were forwarded to the Secretary, Revenue Division, Islamabad for departmental reply/comments in terms of Section 10(4) of the FTO Ordinance, 2000 read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013. In response thereto, the Chief Commissioner-IR, RTO, Peshawar submitted parawise comments vide letters C.No.537 dated 19.02.2018. It was contended that refund for Tax Years 2011 to 2014 could not be processed as refund applications and evidence of tax deduction had not been provided by the Complainant. It was averred that on production/ perusal of relevant documents, refund due for Tax Years 2011, 2012, 2013 and 2014 would be issued, as per law.

6. During hearing, the DR contended that as the Mardan Zone has recently been created, the case record of the Complainant has not yet been received properly. The AR reiterated that inability of the Department for handing over the record to Zone was not a fault of the Complainant for which unlawful delay of settling refund could be justified. Moreover, though filing of refund applications was not mandatory under the statute as held in the case laws cited above, yet the Complainant submitted refund applications and repeatedly sent reminders for issuance of refund, but in vain. In order to facilitate the Department, the AR handed over returns for Tax Years 2011 to 2014, a set of CPRs and copies of the refund applications to the DR with the assurance that more documents, if required, would also be provided within couple of days. The DR assured that after verification process is completed, orders for Tax Years 2011 to 2014 under Section 170(4) of the Ordinance would be passed and refund due issued, as per law. Both the parties have been heard and available record perused. Thus, FTO has issued aforementioned findings.

7. Hearing of the case was held on 30.05.2018. Mr. Muhammad Alam Deputy Commissioner-IR has represented the FBR. On the other hand, Mr. Gawhar Ayub Authorized Representative for the complainant has appeared for the hearing on the particular issue.

8. The instant Representation has been made by the FBR. The Agency has taken ground that the FTO has got no jurisdiction over the case of the Complainant/ Respondent as the FTO Ordinance, 2000 has not been extended to non-taxable area of FATA & PATA within the meaning of Article 247 of the Constitution of Islamic Republic of Pakistan.

9. The Agency has pointed out that claim of the Respondent is erroneous as income/ commission earned by the taxpayer, has been generated outside PATA i.e. in the taxable territory of Pakistan. Thus, receiving payment on

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