

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

Federal Board of Revenue
Versus
Mr. Jalal-ud-Din, Peshawar

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 21.02.2018 PASSED BY THE FTO IN COMPLAINT NO. 0014/PWR/IT/2018

I am directed to refer to your representation No. 4(14)S(TO-I)/2017, dated 19.03.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 19.03.2018 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-IR Peshawar Zone to revisit the order dated 30.09.2015 in terms of Section 122A of the Ordinance and decide the case afresh after affording proper opportunity of hearing to the Complainant in a transparent manner, as per law;**
- 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 rejection of the Complainant's request for revision in terms of Section 122A of the Income Tax Ordinance, 2001 (the Ordinance) without passing proper speaking order. The Complainant an individual resident of Bajaur Tribal Area, FATA showing no taxable source of income. According to the AR, in the year 2014, the Complainant purchased a property in Hayatabad, Peshawar. The department without serving on the Complainant any notice made provisional assessment for Tax Year 2014 vide order dated 30.09.2015, whereby huge tax demand of Rs. 8.322 million was raised. Even the above order was not served on the Complainant. It was only after the notice under Section 138(1) of the Ordinance was sent on the Hayatabad address on 10.11.2016, the Complainant came to know about this fact and he then obtained attested copy of the same. The Complainant thereafter filed return of Income Tax Year 2014 on 13.12.2016. Though complaint of Section 122C (2) of the Ordinance was made within the stipulated time, the department failed to withdraw the tax demand. The Complainant accordingly filed appeal in terms of Section 127 of the Ordinance. The Commissioner-IR (CIR) (Appeals) Peshawar disposed of appeal vide order dated 11.07.2017 holding:

"That the appellant applied for attested copy of assessment order and demand notice on 10.11.2016 and filed the required documents within the stipulated period of 45 days alongwith supporting evidence. That the assessing officer also verified that financial position of the appellant from the Political Agent Bajaur Agency but did not consider the same properly."

These arguments of AR merit consideration, but as already stated that undersigned is barred from entertaining the said appeal it would be both in the fitness of things and in the interest of justice and fair-play to refer the case to the Zonal CIR Peshawar for the redressal of the grievance of the taxpayer, in case he so desires, as prima facie, his grievance seems to be genuine. The appellant is advised to approach the said office in this regard."

4. The Complainant accordingly filed application on 05.10.2017, for revision in terms of Section 122A of the Ordinance. The AR contended that instead of passing an appropriate order, the CIR Peshawar Zone RTO, Peshawar vide letter dated 09.10.2017 informed the Complainant that his request for revision cannot be accepted and was asked to file 2nd appeal against CIR(Appeals) order.

5. The Complainant was referred to 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. The comments was received through Chief Commissioner FTO, Peshawar vide C. No. CCIR/RTO/1052 dated 17.01.2018. It was contended that notices and order under Section 122C of the Ordinance were duly served on the Complainant through Registered Post on his Hayatabad, Peshawar's address. Since reply as well as return for Tax Year 2014 was submitted beyond the period of 45 days of the service of order, therefore, the order passed under Section 122C of the Ordinance attained finality. It was prayed that as this forum

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does not hold jurisdiction over the instant case in terms of Section 9(2) (b) of the FTO, Ordinance, the complaint may be rejected.

6. The AR uttered that the Zonal CIR has summarily rejected application of the Complainant for revision under Section 122A of the Ordinance. In support of his contention, he cited case law 2016 PTD1691 wherein this forum had held that:

“Failure to revisit the order dated 09.05.2014 in terms of Section 122A of the Ordinance tantamount to maladministration.”

7. Arguments of both the parties have been heard and available record perused by FTO. Thus, FTO has issued aforementioned findings.

8. The instant representation has been made by the FBR. The Agency has taken ground that on the basis of information received from the PDA, that the Complainant/respondent purchased a property in Hayatabad, Peshawar for consideration of Rs. 26,000,000/-, statutory notices were issued to the Complainant/respondent to file return of income and explain the source of income but no complaint was made. Provisional assessment U/S 122C of the Income Tax Ordinance, 2001 was finalized by the Inland Revenue Officer and Order/Demand notice served upon the Complainant/respondent vide courier service receipt No. 293.

9. The Agency has pointed out that on application of the Complainant/respondent dated 10.11.2016, attested copies of the order / demand notice were provided. Initially, the Complainant/respondent filed appeal before the Commissioner Inland Revenue, Peshawar (appeals), Peshawar. However, he was advised to seek remedy at the forum of the Commissioner Inland Revenue u/s 122A of the Income Tax Ordinance, 2001.

10. The Agency has pleaded that the Zonal Commissioner rejected the grievance application of the Complainant/respondent on solid grounds and he was duly informed vide letter No. 323 dated 09.10.2017 in this regard. That aggrieved against the action of Zonal Commissioner, the Complainant/respondent filed a complaint before the Federal Tax Ombudsman and after hearing argument of both sides, the FTO passed the following findings/recommendations.

a. “Failure to revisit the order dated 30.09.2015 in terms of Section 122A of the Ordinance is tantamount to maladministration under Section 2(3) of the FTO Ordinance”.

11. The Agency has contended that feeling aggrieved against the order of FTO dated 21.02.2018, this RTO prefers representation before the Honorable President of Pakistan.

12. The Agency has asserted that the FTO held no jurisdiction over the instant case in terms of Section 9(2)(b) of the FTO Ordinance, 2000, as no maladministration was involved. Revisionary power u/s 122A of Income Tax Ordinance, 2001 can only be exercised by the Commissioner suo-moto and no directions from any forum is warranted as per explicit provision of law. Reliance is placed on the order of Honorable President of Pakistan in the case titled FBR Vs Abdul Sattar Karyana Merchant Dokri, complaint No. 04/SUK/IT/04/30/16.

13. The Agency has prayed that the representation of the department may graciously be accepted and order of the honorable FTO may be set-aside in the interest of justice.

14. After perusal of record and examination of all documents it is pointed out that 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.

15. 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.

16. 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

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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.

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. 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 if so advised.

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

The Chairman,
Federal Board of Revenue,
Islamabad.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

No. 13/FTO/2018 dated 13.06.2018

Copy for information to:

1. Mr. Jalal-ud-Din, House No. 27, Sector J-1, Phase-2, Hayatabad, Peshawar.
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)