

President's Secretariat (Public)  
Aiwan-e-Sadr  
ISLAMABAD  
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*Mrs. Samra Tanveer, Lahore*  
*Versus*  
*Federal Board of Revenue*

**REPRESENTATION PREFERRED BY MRS. SAMRA TANVEER, LAHORE AGAINST FINDINGS / RECOMMENDATIONS DATED 25.09.2019 PASSED BY THE FTO IN COMPLAINT NO. 1275/LHR/ST/2019**

Kindly refer to your representation dated 19.10.2019 (received in this Secretariat on 22.10.2019) on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 19.10.2019 (received in this Secretariat on 22.10.2019) has been filed by the Complainant, namely Mrs. Samra Tanveer, against the orders of the learned FTO dated 25.09.2019, whereby it has been held that:

*"It is evident that after filing of the complaint on 02.07.2019, the Complainant has also filed statutory appeal before the CIR (Appeals) against AO No. 39/C-2019 which is sub-judice. It is a settled law that an aggrieved person cannot knock two different forums for seeking the same relief. After filing of statutory appeal against impugned order by the Complainant, the complaint has become non-maintainable. It has been held by the Hon'ble President of Pakistan in case No. 16/2008-Law (FTO) dated 22.07.2008 in C. No. 485-I/2007 that "where a Complainant makes statutory appeal the FTO cannot investigate the complaint whether the appeal was made before or after the complaint."  
As a sequel to the above, the complaint stands rejected. File be consigned to record."*

2. The background of the matter is that the complaint was filed under Section 10(1) of Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the Assessment Order (AO) No.39/C-2019, dated 30.06.2019 made without providing opportunity of hearing to the Complainant.

3. The learned FTO called comments from the Secretary Revenue Division. In response thereto, the Chief Commissioner-IR, Corporate RTO, Lahore forwarded para-wise comments of the Commissioner-IR, Corporate RTO, Lahore vide letter dated 22.08.2019, raising preliminary objection regarding bar of jurisdiction under Section 9(2)(b) of the FTO Ordinance. It was further contended that Complainant's case was selected for audit through computer ballot in terms of Section 72B of the Sales Tax Act, 1990. It was contended that after conducting audit, observations were conveyed to the Complainant. Upon, failure to respond, a show case notice was issued when Complainant appeared and requested for adjournment.

4. With this background, the learned FTO has passed the aforementioned order rejecting the complaint due to the matter pending before the appellate forum.

5. The instant representation has been made by the Complainant. The hearing of the case has been held on 07.01.2020. Mian Tanveer Ahmed Complainant's husband and Mr. Altaf Hussain have appeared on behalf of the complainant. On the other hand, Mr. Naveed Akhtar Deputy Commissioner(IR) has represented the FBR. Both sides have been afforded opportunity of hearing.

6. A thorough perusal of record and examination of all documents on record has been undertaken. It is not out of place to mention that 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.* Moreover, the Hon'ble President has already held vide Law & Justice Division's Order No.16/2008-Law(FTO) dated 22.07.2008 that *"in its reply to the complaint, the department had raised a preliminary objection that the FTO could not investigate the complaint because the complainant has filed statutory appeal against the taxation officer's decision. The FTO rejected the objection for the reason that the complainant has filed appeal after lodging the complaint. The FTO's above decision was contrary to the President's decision that where a complainant makes statutory appeal the FTO cannot investigate the complaint whether the complaint was made before or after the appeal. The reason is that the legal appeal is judicial jurisdiction and the complaint before the FTO is administrative jurisdiction, and administrative jurisdiction must always give way to the judicial jurisdiction. It was a sheer abuse of process of the law on the part of the complainant to make complaint to the FTO and then make legal appeal before the Collector. The FTO's recommendation dated 18.6.2007 and his decision dated 6.11.2007 in review petition thus cannot be sustained."* In the instant matter appeal has already been filed as per the statutory remedy.

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7. The contention of the complainant is that she was required to be afforded an opportunity of hearing before passing of any order(s) by the Department. There can be no denial that no one can be condemned unheard before any adverse action/order is passed is a settled law of the land. But the complainant has resorted to avail the appellate remedy before the statutory forum where all such points can be raised.

8. Thus the learned FTO acted within the scope and limits of law. Consequently, the Complainant's representation is liable to be rejected.

9. Accordingly, Hon'ble President has been pleased to (a) reject the instant Representation and to (b) uphold the impugned recommendations of the learned FTO.

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

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No.70/FTO/2019 dated 10.02.2020

Copy for information to:

1. The Chairman, Federal Board of Revenue, Islamabad.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Chief Commissioner, Inland Revenue, Corporate Regional Tax Office, First floor, Tax House, Syed Mauj Darya road, Lahore.
- ✓ 4. Second Secretary (TO-II), Federal Board of Revenue, Islamabad.
5. Master file.

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