

President's Secretariat (Public)  
Aiwan-e-Sadr  
ISLAMABAD  
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*Federal Tax Ombudsman Suo Moto Action*

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE ON SUO MOTO NOTICE THROUGH OWN MOTION BY THE HONOURABLE FEDERAL TAX OMBUDSMAN DATED 13.02.2019 PASSED BY THE FTO IN COMPLAINT NO. 0012/OM/2018

Kindly refer to your representation dated 07.03.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 07.03.2019 has been filed by the FBR/Agency, against the recommendations of the learned FTO in the Suo Moto case No.0012/OM/2018 dated 13.02.2019, whereby it has been held that:

"Findings / Observations:

*In the light of above following discrepancies come to the forefront.*

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- SS/fto-1
- I. It is a serious case of Mis-reporting. FBR has been kept in dark through misleading Monthly Performance Reports (MPRs).
  - II. Huge under reported pendency/backlog, involving massive revenue has not only adversely exposed state exchequer but created an equally detrimental situation for hundreds of taxpayers who stand condemned un-announced. "Justice delayed justice denied."
  - III. Any hasty or extra-expeditious disposal of the huge backlog by the officer under inspection at this stage may negatively impact either of the department or taxpayers or both. Expeditious but judicious disposal of backlog needs to be ensured.
  - IV. Previously for Commissioners Appeals across the country there was a mandatory "Monthly Disposal Register" which contained date of filing of appeal and date of service of order. This register has been discontinued by FBR with the result that currently there is no quick way to conduct any snap inspection. The register need to be restored.
  - V. FBR has prescribed an Appeal Register which is mandatory for all Commissioners Appeals. The said register contains specific columns for "Institution of Appeal", and "Date of Order". The mandatory Appeal Register doesn't contain the material column of "Date of Hearing" which need to be incorporated.
  - VI. The inspection in the instant case badly exposes FBR's Appellate System wherein there is weak "In-house Cross Check" for the reported figures/numbers. Sheer enforcement of stereo-type MPRs is not sufficient. Member (Legal) FBR must conduct periodical inspection of Appellate formations of both Customs and IRS.
  - VII. Though RTOs and Commissioners Appeals are mostly housed in the same premises yet mostly do not talk to each other. Present Vertical Reporting module need to be replaced with Horizontal Reporting whereby MPRs of both RTOs and Commissioners Appeals must be interlinked so as to assist each stakeholder and FBR in ascertaining actual filing of appeals, disposal and pendency at the end of each month.
  - VIII. Currently FBR has no mechanism to rationalize the workload of Commissioners Appeals, while proper benchmarking needs to be worked out, simultaneously the forum of "Alternate Dispute Resolution" merits attention of FBR, Law & Justice Division and FTO."

2. The background of the matter is that upon receipt of complaints in the discharge of duties and responsibilities against Sh. Muhammad Azam, CIR (Appeals), Faisalabad, Own Motion cognizance was taken by the Hon'ble Federal Tax Ombudsman in terms of Section 9(1) of the FTO Ordinance. It was decided to constitute an Inspection Team to thoroughly probe the allegations in terms of Section 17 of the FTO Ordinance. Though the Federal Tax Ombudsman was fully empowered to constitute an Inspection Team from his Staff Members or any other person or persons but in order to have the process impartial and transparent, the Federal Tax Ombudsman required the FBR to nominate their representative to associate with the Inspection Team. Accordingly, an officer was detailed by the FBR and Inspection Team comprising (1)Mr. Muhammad Tanvir Akhtar Malik, Advisor (Chairman), (2) Mr. Shahid ul Hassan Chattha, CIR (Appeals-III), Lahore (nominee of the FBR) and (3)Mr. Nazir Ahmad Gajana, Advisor (Income Tax), Lahore was constituted.

3. The Inspection Team conducted inspection of the office of Sh. Muhammad Azam, Commissioner Inland Revenue (Appeals), Faisalabad on 23.01.2019 and submitted report thereof. With this background, after due consideration, the learned FTO has directed to send the report to the Secretary, Revenue Division for taking necessary

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action and measures in the light of recommendations made in the Inspection Report and compliance to be submitted within 90 days.

4. The instant representation has been filed by the FBR. The hearing of the case was fixed for 27.08.2019. Mr. Muhammad Nawaz, Audit Officer and Mr. Ashiq Ali, IRAO represented the FBR and requested for adjournment of the matter till December 2019 due to the officer being on training. Accordingly, it has been fixed for 17.12.2019. Mr. Ashiq Ali, IRAO has represented the FBR. The Departmental Representative (DR) has been afforded opportunity of hearing.

5. A thorough perusal of record and examination of all documents on record has been undertaken. The detailed analysis of the Inspection Report showed that: -

- I. Mr. Azam had joined as Commissioner (Appeals) Faisalabad in August, 2017 and as on 1<sup>st</sup>, August 2017 and on 31<sup>st</sup> December 2018 the pendency was as under:

"Pendency as on 01.08.2017"		Pendency as on 31.12.2018		Remarks
Income Tax	874	Income Tax	1297	+423
Sales Tax / FED	228	Sales Tax / FED	200	-28
<b>Total</b>	<b>1102</b>	<b>Total</b>	<b>1497"</b>	

- II. From August, 2017 to December, 2018 through Monthly Performance Reports Mr. Azam has reported the following results to FBR.

"Month"		Opening Balance	Fresh Filing	Disposal	Pendency	Total Pendency
Aug, 2017	I. Tax	874	273	73	1074	1305
	S. Tax & FED	228	38	35	231	
Sept, 2017	I. Tax	1074	107	113	1068	1300
	S. Tax & FED	231	49	48	232	
Oct, 2017	I. Tax	1068	106	170	1004	1197
	S. Tax & FED	232	35	74	193	
Nov, 2017	I. Tax	1004	87	146	945	1146
	S. Tax & FED	193	46	36	201	
Dec, 2017	I. Tax	945	96	102	939	1131
	S. Tax & FED	201	24	33	192	
January, 2018	I. Tax	939	119	70	988	1182
	S. Tax & FED	192	35	33	194	
Feb, 2018	I. Tax	988	166	53	1101	1310
	S. Tax & FED	194	41	26	209	
March, 2018	I. Tax	1101	144	95	1150	1375
	S. Tax & FED	209	47	31	225	
April, 2018	I. Tax	1150	70	153	1067	1274
	S. Tax & FED	225	22	40	207	
May, 2018	I. Tax	1066*	74	131	1009	1189
	S. Tax & FED	206*	13	39	180	
June, 2018	I. Tax	1009	105	65	1049	1049
	S. Tax & FED	**				

July, 2018	I. Tax	1049	76	42	1083	1259
	S. Tax & FED	174	25	23	176	
Aug, 2018	I. Tax	1083	117	43	1157	1333
	S. Tax & FED	176	32	32	176	
Sept 2018	I. Tax	1157	64	41	1180	1341
	S. Tax & FED	176	28	43	161	
Oct, 2018	I. Tax	1180	85	51	1214	1393
	S. Tax & FED	161	49	31	179	
Nov, 2018	I. Tax	1214	67	51	1230	1421
	S. Tax & FED	179	32	20	191	
Dec, 2018	I. Tax	1230	98	31	1297	1497
	S. Tax & FED	191	26	17	200"	

6. The Inspection Team further observed that:-

- a. "From September, 2017 (the first month after taking charge of Appeals) to December, 2018, in the monthly MPRs furnished to FBR. Mr. Azam has reported disposal of 1357 cases of Income Tax and 526 cases of Sales Tax/FED. RTO Faisalabad's record however verifies receipt of only 776 cases of Income Tax and 162 cases of ST/FED. Thus in 581 cases of Income Tax and 364 cases of ST/FED (total 945 cases involving revenue of hundreds of millions) hearings have been completed, disposal reported by Appellate Orders are yet to be issued. This is in addition to 1497 cases wherein appeals are admittedly pending. Thus actual pendency stands at 2442 as against 1102 cases inherited by Mr. Azam at the time of his joining.
- b. As a random sample for inspection the officer was asked to produce complete record of one full month whose orders has already been released and upon the appellant or their Authorized Representatives. For the Month of October 2018 twelve appellate orders were produced which showed a time lag of more than two months between the date of final hearing/ order and date of service of such orders.
- c. Dispatch Register's entry Nos.321-324 dated 16.02.2018 confirmed that appellate orders in 42 cases, heard in September, 2017 were released on 16.02.2018 i.e. after more than 04 months.
- d. Dead slow disposal of appeals can be judged from the following specific instances borne on record:-
  - During the month of September, 2017 while disposal of 161 cases (Income Tax/ST/FED) was reported in the MPR, dispatch register doesn't reflect release of even a single appellate order to RTO Faisalabad.
  - During the month of October 2017 Dispatch Register shows 01 Rectification on 02.10.2017 (in an earlier order), and one appellate order to CIR Corporate on 3-10-2017. On the contrary MPR reflects 244 cases (both Income Tax/ST/FED).
  - During the month of November, 2017 not a single appellate order of Income Tax was released to RTOI but the MPR reflects disposal of 146 cases.
  - In the month of December 2017 disposal reported to FBR stands at 135 (IT 102 and ST/FED 33) whereas Dispatch register reflects only one batch of Income Tax. Dispatch of not a single ST/FED Order is evident from Dispatch Register.
  - In the month of January, 2018 while disposal of 103 (IT 70 and ST/FED 33) cases has been reported not a single order of ST/FED has been dispatched.
- e. The inspection was conducted in respect of the adjudications made in respect o stay orders against recovery of taxes between 1<sup>st</sup> January, 2019 to 15<sup>th</sup> January, 2019. In some of cases stay was granted subject o payment of 10% of demand whereas in some cases stay was granted without any conditionality. No discrimination or any bias is found in these orders.
- f. During the whole proceedings the officer under inspection was quite confused, subdued but largely non-cooperative. Requisitioned record was mostly withheld and some of the partial details were shared with visible reluctance.
- g. The officer under inspection has no hold over the support staff. His poor IT skills have further eroded his control over subordinates.
- h. On account of financial integrity the officer under inspection enjoys good public perception."

All this reflected adversely upon the performance of the officer. The report as adopted by the learned FTO could have serious implications.

7. As per maxim of law i.e. audi alteram partem; no one should be condemned unheard. The superior judiciary provides a torch bearing guidance to the judicial as well as quasi judicial forums in this respect. The Hon'able Supreme Court Pakistan, PLD 2010 Supreme Court 623 has been pleased to hold that "nobody should be condemned unheard and no adverse order, concerning his rights can be passed against any party without hearing him---such rule of natural justice, which unless prohibited by wording of statute, must be read in each and every statute."

8. It appears that the report of the inspection team has been treated as recommendations/findings of the FTO himself. The said report required to be confronted to the official after due notice to him so that he could respond and express his point of view. It was not done and he can legitimately complain of condemned unheard.

9. In the circumstances, it is a fit case for remanding the matter to the learned FTO to examine and decide it afresh after providing opportunity of hearing to the official concerned.

10. Accordingly, Hon'ble President has been pleased to (a) accept the instant Representation of FBR-Agency (b) to set aside the impugned order of learned FTO and to (c) remand it to the learned FTO for its decision afresh after affording due opportunity of hearing to all concerned, in accordance with the law.

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

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.12/FTO/2019 dated 07.01.2020

Copy for information to:

1. The Registrar, Federal Tax Ombudsman's, Islamabad
2. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
3. The Commissioner IR (Appeals), Office of the Commissioner Inland Revenue (Appeals), Regional Tax Office Building, Jail Road, Faisalabad.
4. Master file.

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