

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

Federal Board of Revenue
 Versus
 Mr. Mir Akram Khan, Peshawar

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 15.03.2018 PASSED BY THE FTO IN COMPLAINT NO. 0234/PWR/IT/2018

I am directed to refer to your representation No. 4(234)S(TO-I)/2018, dated 09.04.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 09.04.2018 has been filed by the FBR/Agency, against the findings of the FTO dated 15.03.2018, whereby it has been held that:

Recommendations:

The FBR to direct the Commissioner-IR to-

- i. Ensure that SBP is provided with complete required information and get the Complainant's cheque cleared within 10 days; as per law;
- ii. Allow additional payment for delayed refund from the date first refund voucher was issued to the Complainant i.e on 22.05.2017 under Section 171 of the Ordinance;
- iii. Issue letter of regrets to the Complainant for causing him undue mental distress;
- iv. Conduct investigation and initiate appropriate disciplinary proceedings against the officer(s) found involved in bouncing back the three consecutive refund vouchers; and
- v. Report compliance within 45 days.

3. The brief facts of the case are that this complaint has been filed the Regional Tax Officer (RTO) under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for failure to submit advice note/specimen signature of Refund Officer (RO) along with refund voucher sent to the State Bank of Pakistan (SBP), which caused inordinate delay in clearance of refund cheque for Tax Year, 2015.

4. The Complainant, a senior citizen aged about 77 years filed return of income for Tax Year 2015 and refund claimed of Rs. 11,322. According, to the Complainant refund was created on account of tax deducted under Section 231B(2) and 235A of the Income Tax Ordinance, 2001. After carrying about necessary verification the department sanctioned refund amounting to R. 10,000/- and issued refund voucher dated 22.05.2017. The voucher was deposited in the bank account for clearance but the same was returned by SBP on the ground that required advice note was not sent by the department. On repeated visits of the office, the RO instead of submitting advice note, issued fresh voucher on 03.08.2017. The Complainant again submitted the same to the bank but was also returned un-passed, again with the remarks that the department has failed to submit advice note/specimen signature of the RO. Further contended that thereafter, he repeatedly approached the department, but till filing of the instant complaint, did not get any response.

5. The Complaint was referred to Secretary Revenue Division, Islamabad for comments in terms of Section 10(4) of the FTO Ordinance, 2000 read with Section 9(1) of the Federal Ombudsman Institutional Reforms act, 2013. In response thereto, the Commissioner-IR, RTO, Peshawar submitted parawise comments vide letter No. 929 dated 27.02.2018. It was conceded that the refund amounting to Rs. 10,000/- was sanctioned and voucher issued on 22.05.2017 but due to non-availability of RO's specimen signatures could not be cleared. Subsequently, fresh refund voucher was issued on 03.08.2017 which too could not be en-cashed for the same reason. It was further contended that failure of submitting specimen signatures to the SBP was solely on account of frequent internal changes in the jurisdiction. The Complainant has, however, been delivered fresh refund voucher dated 26.02.2018. The department would now ensure that the same was not bounced back by the SBP and promptly cleared.

6. During hearing on 06.03.2018, the Complainant contended that even the latest refund voucher dated 26.02.2018, issued by the department too has been returned by the SBP on account of not affixing revenue stamps of Rs. 7 and non-registration of signatures of the departmental officer. The SBP also objected that 'mutilation of cheque' was also not authenticated. The DR contended the department has not delayed the matter willfully. Only

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technical issues are getting in the way to get the refund settled. He assured that he would personally ensure that discrepancy, if any removed at the earliest.

7. The arguments of both parties have been given due consideration and available record perused by FTO. Thus, FTO has issued aforementioned findings.

8. The instant representation has been made by the FBR/Agency. The Agency has stated that brief facts leading to the present representation are that the complainant, an individual, filed complaint before the honorable Federal Tax Ombudsman and claimed refund of Rs. 11,322/- for Tax Year. On account of tax deducted under Section 231B(2) and 235A of the Income Tax Ordinance, 2001. After carrying out necessary verification, refund amounting to Rs. 10,000/- became due to be paid to the Complainant.

9. The Agency has pointed out that refund was issued to the Complainant but was not cleared by the State Bank of Pakistan, Peshawar, because refund voucher book stood issued to some other Circle. Fresh refund voucher was issued, which was returned un-passed due to non-availability of RO's specimen signatures.

10. The Agency has mentioned that during the pendency of clearance of the refund voucher due to technical reasons, the Complainant filed complaint before the honorable Federal Tax Ombudsman against non-issuance of the refund for Tax Year 2015.

11. The Agency has explained that this RTO is aggrieved with sub Para (iv) of Para-7 of the recommendations of the honorable Federal Tax Ombudsman and representation is being filed before the Honorable President of Islamic Republic of Pakistan inter-alia, on the grounds. That no maladministration is involved on the part of the concerned Officer Inland Revenue as the refund voucher was issued well in time, however, the same was not cleared due to technical problems. The observations of the State Bank of Pakistan have been removed and the refund voucher stands cleared/enchased.

12. The Agency has expressed that the honorable Federal Tax Ombudsman has no power under Section 9(2)(a)(b) of the FTO Ordinance, 2000 to interfere in the service matter and to investigate or enquire into the matter which relates to assessment of income, determination of liability of tax, interpretation of law, rules and regulation relating to assessment. Reliance is placed on the order of the Honorable President of Islamic Republic of Pakistan dated 15.03.2017 in complaint No. 171/LHR/ST(39)/517/2016- M/s Jehangir Yousaf Meer.

13. The Agency has prayed that the recommendation of the honorable Federal Tax Ombudsman in sub-Para(iv) of Para-7 of the Judgment dated 15.03.2018 may graciously be set-aside in the interest of justice.

14. 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. Perusal of the record indicates that the recommendation (iv) 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. Thus 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 including unnecessary disciplinary proceedings against the officers and adverse remarks to be recorded in the PERs of various officers just under the garb of maladministration.

16. It is as clear as the crystal that FTO has made recommendations which are only **to the extent to ensure that SBP is provided with complete required information and get the Complainant's cheque cleared within 10 days; as per law; allow additional payment for delayed refund from the date first refund voucher was issued to the Complainant i.e on 22.05.2017 under Section 171 of the Ordinance; issue letter of regrets to the Complainant for causing him undue mental distress; and report compliance within 45 days.** It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. FBR representation is concerned with recommendation (iv) of the impugned orders. In such circumstances, this representation is liable to be accepted to the extent of finding (iv) of FTO and the recommendations/findings (i,ii,iii&v) of FTO are sustainable and maintainable being unexceptional in nature.

17. Accordingly, the President has been pleased to accept the instant representation of FBR to the extent of finding (iv) of the impugned recommendation and to set aside the recommendation (iv) of FTO's orders. Notwithstanding, findings i,ii,iii&v of learned FTO are upheld.

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 14/FTO/2018 dated 13.06.2018

Copy for information to:

1. Mr. Mir Akram Khan, Iskendera Medical Hall, Sikandar Pura, G.T. Road, Peshawar.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
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4. Director to Secretary to the President.
5. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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