

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

Federal Board of Revenue
 Versus
 Mr. Tariq Abdullah, Karachi

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS
/ RECOMMENDATIONS DATED 29.12.2017 PASSED BY THE FTO IN COMPLAINT NO.
486/KHI/IT(157)/780/2017

I am directed to refer to your representation No. 4(780)S(TO-1)/2017, dated 01.02.2018 on the above subject and to say that the President has been pleased to pass the following order:

2. This Representation dated 01.02.2018 has been filed by the Agency-FBR against the findings of the FTO dated 29.12.2017 whereby it has been held:

"FBR to direct the Chief Commissioner to-

- i. **Ensure that the amount recovered illegally from the bank account of the Complainant is refunded, as per law; and**
- ii. **Report compliance within 45 days thereafter".**

3. Brief facts of the case are that this complaint was filed under Section 10 sub section 1 of the FTO Ordinance, 2000 against recovery of AOP's tax demand from the bank account of the Complainant-Mr. Tariq Abdullah resident of Karachi. The Complainant is registered with the Department vide NTN 0255519-7. According to the AR, although no tax liability was outstanding against the Complainant, the Department without adopting due process and serving any notice recovered unlawfully Rs. 10.275 million from the Complainant's account maintained in M/s Habib Metropolitan Bank Limited Karachi.

4. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013. In response thereto, the Commissioner-IR, Zone-IV, RTO-II, Karachi submitted parawise comments dated 21.11.2017. At the outset preliminary objection of bar of jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance was raised on the basis of Hon'ble High Court of Lahore's decision in W.P 5999/2017. On merits, it was contended that demand for tax year 2014 amounting to Rs.12.536 million was created against the Complainant under Section 122(1)(5) read with Section 111 of the Income Tax Ordinance, 2001. The Complainant was served with above order dated 31.08.2017 alongwith Demand Notice under Section 137 of the Ordinance through FBR e-portal. As the Complainant failed to make payment, provisions of Section 140 of the Ordinance were rightly invoked and an amount of Rs. 10.725 million was recovered through attachment of his bank account. It was further contended that no maladministration was involved on part of the Department.

5. The AR filed rejoinder dated 06.12.2017 and vehemently argued that tax demand for tax year 2014 amounting to Rs. 12.536 million was created on 31.08.2017 under Section 122(1)(5) read with Section 111 of the Ordinance, against 'The Potato Factory International' an AOP, assessed to tax vide NTN 3026726 and not against the Complainant. The above order, was on the AOP and DN was served for payment of demand on the Complainant. Whereas, the Complainant, though member of above AOP is a separate legal entity registered vide NTN 0255519-7. He further argued that demand outstanding against the AOP cannot be recovered from its members. There is no provision of law to recover the AOP's tax liability from its member. However, notwithstanding position stated above, the Complainant was not afforded even a single opportunity of hearing and his bank account was unlawfully attached under Section 140 of the Ordinance and an amount of Rs. 10.725 million was withdrawn. The AR referred to an Order in Complaint No. 426/KHI/IT(148)/1352/2015 dated 08.12.2016 whereby under the similar circumstances, the amount was held to be illegally recovered from the bank account of the Complainant and the same was ordered to be refunded. As regards preliminary objection of bar under Section 9(2)(b) of the FTO Ordinance, the AR contended that as no order has been passed against the Complainant, therefore, question of availability of any legal remedy of appeal does not arise in this case. He averred that even otherwise, the impugned tax demand for tax year 2014 outstanding against AOP, stands deleted as the Commissioner-IR (CIR) (Appeals-IV) Karachi has set aside assessment vide order dated 31.08.2017.

6. During the hearing, the DR contended that CIR (Appeals-IV) Karachi has set aside the assessment for tax year 2014 for fresh proceedings. Arguments of the parties have been given due consideration and available record perused by the FTO. Thus, FTO has issued aforementioned findings.

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7. The Agency has taken ground that in terms of Section 9(2)(ii) of the FTO Ordinance, 2000 the FTO does not have jurisdiction to inquire into matters which relates to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the relevant legislation.
8. The Agency has pleaded that the President has held that:
“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 relates to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulation 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 circumstance, where remedy of appeal was available, FTO could not interfere with could not pass orders under garb of maladministration”.
9. The Agency has contended that the demand for tax year 2014 amounting to Rs.12.536 million was created on 31.08.2017 against the Potato Factory International, an AOP. The Complainant is member of the AOP. The order was properly served alongwith the Demand Notice under Section 137 of the Ordinance through courier as well as FBR e-portal on 31.08.2017. The taxpayer filed an appeal to CIR(A) on 22.09.2017. As the taxpayer failed to make payment provisions of Section 140 of the Ordinance were invoked and an amount of Rs.10.725 million was recovered from Mr. Tariq Abdullah/ the Complainant, member of the AOP, through attachment of his bank account on 26.10.2017 as the Income Tax Ordinance, 2001 has not put any limitation on recovery of outstanding demand from partner of AOP. Findings of the FTO are, therefore, misplaced.
10. The Agency has stated that the instant complaint was filed on 06.11.2017 (during the pendency of the appeal). In terms of Section 9(2)(i) of the FTO Ordinance, 2000, the FTO does not have jurisdiction to investigate or inquire into matters which are *subjudice* before a court of competent jurisdiction or tribunal or board or authority on the date of receipt of a complaint.
11. The Agency has prayed that the impugned decision/ findings of the FTO in C.No. 486/KHI/IT(157)/780/2017 with consequent recommendations may be vacated by declaring it in excess of jurisdiction and being *ultra vires*.
12. On the other hand, the Complainant has filed his comments on 19.2.2018 against the instant representation of FBR and supported the impugned recommendations of learned FTO.
13. After perusal of record and examination of all documents, it has been observed that 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. 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.
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 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.

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

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 07/FTO/2018 dated 19.04.2018

Copy for information to:

1. Mr. Tariq Abdullah, S/o Shaikh Muhammad Abdullah, House No. 81, Block-3, Muhalla Farhan Society, Karachi.
2. Mr. Abdul Rahim Lakhani, Advocate, 211, Progressive Plaza, Beaumont Road, P.I.D.C, Karachi.
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
4. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)