

President's Secretariat (Public)
Aiwan-e-Sadr
ISLAMABAD

*Federal Board of Revenue
Versus
Mr. Zahir-ud-Din, Lahore*

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS /
RECOMMENDATIONS DATED 20.03.2019 PASSED BY THE FTO IN COMPLAINT NO. 102/LHR/IT/2019**

Kindly refer to your representation dated 18.04.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 18.04.2019 has been filed by the FBR/Agency, against the findings of the FTO dated 20.03.2019, whereby it has been held that:

"FBR to:

- i. Direct the Commissioner-IR, Zone-IV, RTO-II, Lahore to issue refund for Tax Year 2010 already determined alongwith additional payment for delayed refund, as per law; and*
- ii. Report compliance within 45 days."*

2. The background of the matter is that the Complainant an individual filed return of income tax for Tax Year 2010, under Section 114 (1) of the Income Tax Ordinance, 2001 (the Ordinance). Subsequently, proceedings for Tax Year 2010, were initiated and amended assessment was framed under Section 122(5) of the Ordinance, vide order dated 15.06.2016, whereby demand of Rs. 6.093 million was created, which the department recovered through attachment of the Complainant's bank account. According to the Authorized Representative (AR), the Complainant preferred appeal against the above order. The Commissioner-IR (Appeals-III) Lahore, annulled the amended assessment, vide order dated 23.01.2017. As the department failed to give effect to it, the Complainant filed Writ Petition (WP) No. 27055/17 before the Hon'ble Lahore High Court, Lahore. However, on the undertaking given by the department to allow appeal effect to the CIR (Appeals-III) Lahore's decision, the Hon'ble Court disposed of WP vide order dated 18.05.2017. The department, subsequently allowed appeal effect under Section 124 of the Ordinance, vide order dated 08.03.2018, creating refund amounting to Rs. 6.903 million. However, despite repeated efforts of the Complainant, the department failed to issue refund created as a result of appeal effect. Moreover FBR had filed second appeal before ATIR on 08.03.2017, which is still pending.

3. Before the FTO the stance of the FBR was that:-

"Preliminary objection regarding bar of jurisdiction in terms of Section 9(2)(b) of the Federal Tax Ombudsman Ordinance raised. On merits, it was contended that following appeal effect the refund for Tax Year 2010 had been determined at Rs. 6.093 million. However, against the CIR (Appeal-III) Lahore's order, the department had already filed appeal before the before the Appellate Tribunal Inland Revenue (ATIR) Lahore."

4. Both sides were heard and available record was perused by the learned FTO. Thus, the learned FTO issued aforementioned recommendations. Hence the instant representation by the FBR.

5. The hearing of the case has been held on 27.08.2019. Mr. Tariq Baig, IRO has represented the FBR. On the other hand, Syed Akhtar Abbas Kazmi Advocate has appeared on behalf of the Complainant. Both sides have been afforded the opportunity of hearing.

6. The Departmental Representative (DR) has pointed out that the complaint was filed on 16-01-2019 before the Honorable FTO, whereas the Department had already filed 2nd appeal before the learned ATIR on 08.03.2017 against the order of CIR (Appeal-III) Lahore. Therefore, as the Department had already filed 2nd appeal before filing of the complaint, the matter is presently subjudice and out of the purview of the learned FTO.

RET
Wg
27/9
BS

206

27/9/19

26-9-19

(T.R.D)

7 During the course of hearing, conscious of the pendency of the matter before the other forum, an attempt has been made to resolve it amicably. There is statedly no restraining order in the field. As a result of deliberations between the parties and with their concurrence, the order of the FTO is modified to the extent that the refund claim amount (original) will be honored subject to the ultimate decision of the Tribunal/Courts; however the additional payment for delayed refund as ordered by the FTO will remain in abeyance till the decision of the Tribunal and its fate will be dependent upon such a decision of the Tribunal. This process will be completed within a period of thirty days.

8. In the circumstances, the instant representation of the Agency-FBR deserves to be disposed off accordingly.

9. Accordingly, Hon'ble President has been pleased to dispose off the instant Representation of FBR-Agency in terms of Para-6 and 7 above.

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

The Chairman,
Federal Board of Revenue,
Islamabad.

No.18/FTO/2019 dated 26.09.2019

Copy for information to:

1. Mr. Zahir-ud-Din, C/o Sabri Plastic Industry, 140-Ranjeet Part Mission Road, Lahore.
2. The Registrar, Federal Tax Ombudsman's, Islamabad.
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad
4. The Commissioner Inland Revenue, Zone-V, RTO-II, Lahore.
5. Syed Akhtar Abbas Kazmi, Advocate High Court, 49 First Floor, Al-Lateef Center, Gulberg-III, Lahore.
6. Master file.

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

207