

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

Mr. Ishtiaq Ahmad, Mandi Bahauddin
Versus
Federal Board of Revenue

**REPRESENTATION PREFERRED BY MR. ISHTIAQ AHMAD, MANDI BHAUDDIN
AGAINST FINDINGS / RECOMMENDATIONS DATED 30.07.2018 PASSED BY THE FTO IN
COMPLAINT NO. 342/LHR/IT/2018**

I am directed to refer to your representation No. NIL, dated 07.08.2018 on the above subject and to say that the President has been pleased to pass the following order:

2. This Representation dated 07.08.2018 has been filed by the Complainant – Mr. Ishtiaq Ahmad against the revised findings of the FTO dated 30.07.2018 whereby it has been held:

"In view of the foregoing discussion the impugned order neither suffers from any legal infirmity nor any mistake floating on the face of the record. The RP is, therefore, of no merit, which stands dismissed. Case file be annexed with the complaint file and be consigned to record."

Original findings of FTO dated 23.04.2018 provides as follows:

"The Deptt can pass a speaking order only after examining the documents to be provided by the complainant which have not been made available so far. Further, under Section 124(1) of the Ordinance, where in consequence of, or to give effect to, any proceedings or direction in any order made by the CIR (Appeals), an assessment order or amended assessment order is to be issued to any person, the Commissioner shall issue order within two years from the end of the financial year in which the order of Commissioner IR(Appeals) was served upon the Commissioner. The limitation to pass such order has not yet expired, therefore, the complaint is premature. As no maladministration could be established in the case, the investigation is closed. Case file be consigned to record".

3. Brief facts of the case are that the complaint has been filed under Section 10(1) of the FTO Ordinance, 2000 against department's failure to give appeal effect to the order of CIR (Appeals) dated 06.10.2017 and as a consequence non-issuance of refund amounting to Rs. 9.043 million for the Tax Year 2016.

4. The complainant e-file refund application on 24.11.2016 followed by reminder dated 16.02.2018 but the same was rejected vide order under Section 170(4) dated 07.03.2017 aggrieved, the complainant filed appeal before the Commissioner-IR(Appeals), Sargodha who vide order dated 06.10.2017 remanded the case to the assessing officer with the direction to re-examine the complainant's replies dated 21.12.2016 and 24.02.2017, evaluate the evidence provided by him and pass a speaking order after providing opportunity of hearing to the complainant. The complainant's AR vide letter dated 16.02.2018 requested the department to give appeal effect and issue refund due but to no avail. This attitude of the department was construed as maladministration under the FTO Ordinance.

5. The complaint was sent for comments to the Secretary, Revenue Division in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. The FBR vide letter dated 22.03.2018 forwarded parawise comments of Commissioner-IR, Zone-I, RTO, Sargodha dated 20.03.2018 raising preliminary objection that the matter relates to assessment of income and determination of tax liability. therefore, this forum had no jurisdiction to investigate or inquire into it, in terms of Section 9(2)(b) of the FTO President of Pakistan in C.No. FTO/LHR/0000697/2016 dated 16.01.2017, order No. 60/2012-Law(FTO) dated 04.10.2013 and No. 108/FTO/2016 dated 17.10.2016. Added that the nature of business supported with documentary evidence and admissibility of refund is yet to be determined. Such decision is pending for want of documents to be provided by the complainant. However, notice under Section 124/170(4) of the Ordinance had already been issued for provision of the required details/ documents, but the same have not been furnished as yet. Both sides heard and available record perused. The FTO has issued the aforementioned findings.

6. The instant representation has been filed by the complainant. The complainant has stated that the representationist is an individual, registered with FBR having registration number 3440105664221 and falls within the jurisdiction of RTO, Sargodha. The representationist derives income by executing lease contracts. The tax of the representationist is deducted at source under Section 236A of the Income Tax Ordinance, 2001. The representationist e-filed his return of income on 24.11.2016 declaring the result as under:

Tax Year	Income Declared	Tax Paid	Tax Payable	Refund Claimed
2016	9791000/-	11690127/-	2646350/-	9043777/-

Secy (to-1)

244

PCF
19/1/19

7. The complainant has mentioned that the representationist also e-filed prescribed refund application as per law on 24.11.2016. The Assessing Officer rejected refund application of the taxpayer on 07.03.2017 for want of supportive documents. The taxpayer filed an appeal before the CIR (Appeals) Sargodha who by remanding the case directed the Assessing Officer to examine the reply of the taxpayer dated 21.12.2016 and 24.12.2016 because the taxpayer had furnished the supportive documents to Assessing Officer.

8. The complainant has asserted that the Assessing Officer was required to pass an order under Section 170(4) read with Section 124(4) of the Income Tax Ordinance, 2001 within 60 days after the receipt of the appellate order but he failed to do so, therefore, the taxpayer filed a complaint before the FTO, Lahore and sought direction in that connection, but the FTO rejected the complaint on the following grounds:

- a. The taxpayer did not furnish supportive documents to Assessing Officer;
- b. The time required for disposal of refund application after the receipt of appellate order is 02 years.

9. The taxpayer filed a review petition before the FTO wherein he averred that the taxpayer has already furnished the supportive documents which the CIR (Appeals) also acknowledged and the matter under review does not require issuance of any assessment order for which 02 years apply but related to refund application which is required to be decided within 60 days under Section 170 of Income Tax Ordinance, 2001. The FTO rejected the review petition, hence this representation.

10. The complainant has taken ground that the FTO is not justified to hold that the taxpayer did not furnish supportive documents to Assessing Officer, as the CIR (Appeals) already decided this issue in favour of the taxpayer. Moreover, the taxpayer has furnished supportive documents a number of times even on 12.03.2018 after the rejection of complaint, as it is not a herculean task so the FTO is making mockery for the facts which is highly deplorable. The FTO erred at law by holding that the time provided for dispose of refund application after receipt of appellate order is 02 years. The time period of 02 years is provided under Section 124(1) of the Income Tax Ordinance, 2001 in case of assessment order is to be issued by the Commissioner to any person, not in cases of orders on refund applications. In the instant case, the CIR (Appeals) remanded the case to Assessing Officer for passing fresh order under Section 170 (not for issuing of assessment order), so Assessing Officer is required to take over the proceedings from the point where he discontinued by passing the order under Section 170 of the Income Tax Ordinance, 2001. Moreover, even for a fresh application the Assessing Officer is required to pass an order under Section 170 ibid within 60 days so the FTO is not justified to reject the complaint of the taxpayer on this ground. Refund is a substantive right of the taxpayer which if delayed beyond 03 months, compensation is required to be paid by the Commissioner to taxpayer under Section 171 therefore, the FTO cannot hold that 02 years are required to dispose of refund application after the receipt of Appellate Order.

11. The complainant has prayed that the findings' recommendations of the FTO dated 30.07.2018 may please be set aside and Respondent No.02 to 04 may please be directed to issue refund and compensation to Representationist under Section 170 of the Income Tax Ordinance, 2001 and any other relief which this Court deems fit and appropriate may also be granted in the interest of natural justice and fair play.

12. On the other hand, the Agency has filed comments against the instant representation of Complainant on 29.08.2018 and supported the impugned recommendations findings of learned FTO with the request that the representation of Complainant may be rejected.

Analysis/Conclusion

13. After perusal of record and examination of all documents, it has been noted 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.

14. 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.

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. Consequently, the Complainant's representation is liable to be rejected. However, the complainant can seek remedy available to him from the relevant forums under the law.

215

16. Needless to be mentioned that this representation has been filed by the Complainant repeating the contents of the pleadings already made before the learned FTO. Nothing turns on the same as it fails to answer the reasoning of learned FTO and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the FTO. Undoubtedly FTO's decision is based on sound reasoning and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings/recommendations do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability.

17. Accordingly, the President has been pleased to reject the instant representation of the complainant namely Ishtiaq Ahmad and the impugned recommendations/findings of learned FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

Mr. Ishtiaq Ahmad,
R/o Villah Bosal Sukha, Malakwal,
Mandi Bahauddin.

No. 43/FTO/2018 dated 07.01.2019

Copy for information to:

1. ✓ The Chairman, Federal Board of Revenue, Islamabad
2. Mr. Raashid Umar Saroya, Advocate High Court, Chamber: 205, 3rd Floor Subhan Centre, Mouj Darya, Lahore.
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
4. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

246