

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

Ms. Rubina Farah Naheed, Mandi Bahauddin
 Versus
 Federal Board of Revenue

REPRESENTATION PREFERRED BY MS. RUBINA FARAH NAHEED, MANDI BHAUDDIN AGAINST FINDINGS / RECOMMENDATIONS DATED 30.07.2018 PASSED BY THE FTO IN REVIEW PETITION COMPLAINT NO. 343/LHR/IT/2018

This is with reference to your representation dated 15.08.2018 and to convey that the **Honourable President has considered and pleased to pass the following order:**

2. This Representation dated 15.08.2018 has been filed by the complainant—Ms. Rubina Farah Naheed W/o Waqar Amin (deceased) against the revised findings of the FTO dated 30.07.2018 whereby it has been held:

“5. Evidently, the Petitioner furnished evidence as stated in the order dated 15.09.2016 under Section 170(4) of the Ordinance. However, after carrying out necessary verification part refund for Tax Year 2015 could be verified and issued to the Petitioner and the balance rejected for want of verification. Obviously, responsibility rests with the Petitioner to furnish further supportive documents/ evidence required by the Deptt so that his balance refund could be verified and settled.

6. In view of the foregoing facts, as the Petitioner has failed to point out any legal infirmity in the impugned order or any error on the face of the record. The RP is, as such of no merit, which stands dismissed. The record of RP be annexed with the complaint file”.

Original findings of FTO dated 23.04.2018 provides as follows:

“4. Both sides heard and available record perused. Deptt’s contention appears to be convincing. The complainant has not fulfilled its responsibility to provide relevant evidence in support of refund claim and its admissibility so far.

5. for what has been discussed above, no maladministration is evident, therefore, the investigation is closed. Case file be consigned to record”.

3. Brief facts of the case are that the complaint filed under Section 10(1) of FTO Ordinance, 2000 against non-issuance of Income Tax Refund amounting to Rs.4.150 million for Tax Year 2015. The complainant/Petitioner/widow of Waqar Amin contended that she uploaded her Income Tax Returns to IRIS on 25.10.2015 and e-filed refund application on 01.12.2016 but no order was passed by the department within the prescribed time nor any notice was issued to the complainant to requisition information/ documents required for processing the refund due to the taxpayer. The complainant sent reminders to the ACIR on 08.01.2018, 16.02.2018 to the CIR, Zone-I on 16.02.2018 but it also elicited no response. This attitude of the department was construed as maladministration under Section 2(3)(ii) of FTO Ordinance, 2000.

4. The complaint was sent for comments to the Secretary, Revenue Division under Section 10(4) of FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, the FBR/Agency vide letter dated 22.03.2018 forwarded para-wise comments of Commissioner IR, Zone, RTO, Sargodha dated 21.03.2018 raising preliminary

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objection with regard to the jurisdiction of FTO under Section 9(2)(b) of FTO Ordinance on the ground that the matter pertained to assessment of income and determination of tax liability. Reference was made to the decisions of the President of Pakistan in C.No. FTO/LHR/0000697/2016 dated 16.01.2017, No.60/2012-Law(FTO) dated 04.10.2013 and No. 108/FTO/2016 dated 17.10.2016. On merits, the department contended that admissible refund of Rs. 0.227 million had already been issued to the taxpayer by the officer vide order under Section 170(4) of the Ordinance dated 15.09.2016, whereas admissibility of the balance refund is yet to be determined as per law because CPRs provided by the taxpayer reflect tax deduction other than made at the time of auction by sale under Section 236A of the Ordinance. According to the department, the complainant intends to change Section of tax deduction being reflected in CPRs which is not allowed in the light of Board's C.No. 105(49)Sec-IR(A&R)/2017/29468 dated 07.03.2018. Added that the complainant failed to provide evidence that the tax deducted was adjustable and so the admissibility of refund could not be established from CPRs. Further C.No. FTO/403/LHR/IT(308)/1640/17 earlier filed by the AR in this case by furnishing bogus power of attorney reflecting signatures of the deceased taxpayer, after his death was withdrawn. Accordingly, the proceedings were closed and case file consigned to record as no maladministration was established in the case. Thus, FTO has issued the aforementioned findings.

5. The instant Representation has been filed by the complainant. The complainant has stated that she is a widow of Waqar Amin (deceased) who was registered with FBR having registration number 3440244 691023 and fell within the jurisdiction of RTO, Sargodha. The deceased purchased the rights in open public auction to collect fee from Executive Engineer, Highways Division, Faisalabad, Director General Fisheries, Lahore and Executive Engineer, Qadirabad Barrage Division, Hafizabad for Tax Year 2015 and paid Advance Tax under Section 236A of the Income Tax Ordinance, 2001 as per terms and conditions.

6. The complainant has pointed out that after filing the return of income and refund application the Respondent passed order under Section 170 on 15.09.2016 and issued partial refund of Rs. 227,620/- out of total claim amounting to Rs.4,150,000/- to her deceased husband rest of the refund amounting to Rs.3,922,380/- was pending for want of verification of CPRs as held by the Respondent in the order. The deceased husband has appeared a number of times before the Assessing Officer for initiation of verification of CPRs / challans but he did not do any act in that regard so far. Thereafter, the taxpayer also filed an application for correction of the CPR no step was taken by the Respondent in that regard too. The details of which are tabulated below:

S.No.	CPR No.	Payment Date	Tax Amount	Remarks
1)	IT2015021600421105155	16.02.2015	608046	Verification required
2)	IT2015052900421219210	25.05.2015	1536950	—
3)	IT2014090103351001246	01.09.2014	283000	—
4)	Certificate	06.04.2015	886338	—
5)	IT2015031600421142758	16.03.2015	608046	Correction of CPR required (application pending with Respondent)
Total tax			3922380	

7. The complainant has underscored that after demise of her husband, the complainant has got Succession Certificate on 05.01.2018 from Civil Court to collect 1/8 share of total refund i.e.

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Rs. 18,152,343/-, Rs. 3,922,380/- and Rs. 14,229,963/- for Tax Year 2015 and 2016 respectively which has been furnished to Respondent but the Respondent is not issuing refund to the complainant, hence a complaint was filed before the FTO which was rejected. The taxpayer filed a Review Petition but that too was rejected hence this representation.

8. The complainant also taken ground that the rejection of complaint is against the facts of the case neither the Assessing Officer is confronting to taxpayer which documents he further requires for verification of tax payment and nor did the FTO pointed out in the impugned order. As the taxpayer has submitted copies of CPRs/Challan amounting to Rs.4,992,500/- and award letters, therefore, the FTO order without pointing out any shortcomings of evidence is liable to be set aside.

9. The complainant has mentioned that on 01 CPR incorrect section is written inadvertently by withholding agent for which the complainant has filed an application for correction of CPR but her application is not being forwarded to the competent authority and for such inaction also no appeal lies. Moreover, it is a settled principle of law that "no one can be made to suffer for the mistakes of others" and refund is a substantive right of the claimant which cannot be rejected for want of verification or failure to furnish supportive documents (reliance order No. 13/200/-Law(FTO) dated 28.07.2008 of the President of Pakistan). The time provided for filing of appeal against the order passed under Section 170 of the of the Income Tax Ordinance, 2001 has expired, therefore, no remedy of appeal is available with the complainant.

10. The complainant has mentioned that no legal issues are involved in order passed under Section 170 *ibid*, therefore, instead of filing appeal the complainant wants that verification/enquiry of tax payments may be reinitiated and she should be involved in that process, and, if tax payments are found bogus she should be prosecuted for wrong claim, so rejection of the complaint by the FTO is illegal. The Clause 7(iv) of Circular No. 5 of 2003 dated 30.06.2003 specifically directs the Commissioner in the following words:

"The refund rejection order shall not be passed merely for want of tax verification where the original challan of tax or evidence of tax deducted/collected has been furnished by the taxpayer. In such cases shall be passed within the stipulated period even if the tax verification process has not been completed."

11. The complainant has prayed that the findings/ recommendations of FTO dated 30.07.2018 may be set aside and Respondent No. 2 to 04 may be directed to:

- i. Reinitiate the verification process of tax payments;
- ii. Forward the application of the taxpayer for correction of CPR; and
- iii. Issue balance refund and compensation to complainant as per law.

12. On the other hand, the Agency has filed comments against the instant representation of Complainant on 10.09.2018 and supported the impugned recommendations/findings of FTO with the request that the representation of Complainant may be rejected.

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.

16. Needless to be mentioned that this representation has been filed by Complainant repeating the contents of the pleadings already made before the FTO. Nothing turns on the same as it fails to answer the reasoning of 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 (a) reject the instant representation of Complainant namely Ms. Rubina Farah Naheed and to (b) uphold the impugned recommendations/findings of FTO.

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

Ms. Rubina Farah Naheed,
R/o House No. 3F-22-156,
Lalazar Colony, Mandi Bahauddin.

No. 46/FTO/2018 dated 27.05.2019

Copy for information to:

1. The Chairman Federal Board of Revenue Islamabad.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Master file.

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

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