

President's Secretariat (Public)  
Aiwan-e-Sadr  
ISLAMABAD  
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*Federal Board of Revenue*  
*Versus*  
*Mr. Aftab Hussain Shah, Gujrat*

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS /  
RECOMMENDATIONS DATED 16.05.2019 PASSED BY THE FTO IN COMPLAINT NO. 0362/GWL/IT/2019**

Kindly refer to your representation dated 14.06.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 14.06.2019 has been filed by the FBR against the recommendations of the learned FTO dated 16.05.2019, whereby it has been held that:

*"The FBR to:*

- (i) *direct the Commissioner-IR, Gujrat Zone to dispose of request of the Complainant for revision dated 26.12.2018, under Section 122A of the Ordinance, after providing adequate opportunity of hearing, to the Complainant, as per law: and*
- (ii) *Report compliance within 45 days."*

2. The background of the case is that the complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against order dated 30.06.2018 passed under Section 121(1)(d) read with Section 111(1)(b) of the Income Tax Ordinance, 2001 (the Ordinance). According to the Authorized Representative (AR), the Complainant, a non-resident overseas Pakistani, settled in France was issued notice by the Department (Deptt) dated 11.01.2018 requiring him to explain source of his investment in purchase of an immoveable property amounting to Rs. 18.430 million during Tax Year 2013. The Complainant explained his source of income vide letter dated 15.03.2018. As per details, the Complainant had remitted from his UAE Account Rs. 17.4 million to his Pakistan accounts maintained in UBL and MCB Sarai Alamgir Branches from 26.12.2011 to 26.03.2012. The Deptt ignoring the aforementioned details without adopting procedure laid down under Section 172(3)(b) of the Ordinance, passed the impugned order dated 30.06.2018 under Section 121(1)(d) read with Section 111(1)(b) of the Ordinance. The Complainant came to know about the ex-parte proceedings only after the recovery proceedings, were started by the Deptt. After obtaining a copy of the impugned order 30.11.2018, the Complainant moved an application dated 26.12.2018, requesting the Commissioner-IR Gujrat to cancel the impugned order under Section 122A Ordinance. However, despite repeated efforts of the Complainant, no response had been given by the Deptt.

3. In response to the notice, the CIR Gujrat Zone RTO, Sialkot submitted Para-wise comments to the effect that during Tax Year 2013, the Complainant had made investment in immovable property amounting to Rs. 18.43 million, thus statutory notices for Tax Year 2013 were issued under Section 114(4) read with Section 116(1) of the Ordinance, but no response was made. Thereafter notices under Section 111(1)(b) and 121 (1)(b) of the Ordinance were issued on 19.06.2018 for compliance by 30.06.2018. As compliance was not made, the assessment for Tax Year 2013 was completed under Section 121(1)(d) read with Section 111(1)(b) of the Ordinance, vide impugned order dated 30.06.2018 and that against the impugned assessment, the Complainant has legal remedy available to file appeal under Section 127 of the Ordinance.

4. The instant representation has been made by the Agency-FBR. Mr. Farooq Anwar Additional CIR has represented the FBR. On the other hand, the Complainant has not attended the hearing despite notice.

5. It is born out from the record that before passing the order complained of no effort was made to ascertain the due service of the notices nor the assessee was present /represented before the officer. The application filed before the commissioner also remained unprocessed and un-responded. Such inaction and process had attracted the jurisdiction of the learned FTO, thus objection as to availability of legal remedy loses its significance. In the circumstances the learned FTO has made the recommendations which are merely to the extent, directing the Commissioner-IR, Gujrat Zone to dispose of request of the complainant for revision dated 26.12.2018 under Section 122A of the Ordinance, after providing adequate opportunity of hearing to the complainant as per law. The order is aimed at to satisfy the mandate of law and in accord with the principles of natural justice. It is the Agency to decide the matter as per law. In the circumstances, the recommendations of the learned FTO are in accord with law and the Agency has unjustifiably filed this representation. Needless to state that the mention of Section 122A even if is ignored, the learned FTO otherwise could pass an order of

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the nature. In the circumstances, the representation is liable to be rejected. No justification has been made out to upset the recommendations of the learned FTO.

6. Accordingly, Hon'ble President has been pleased to (a) reject the instant Representation of FBR-Agency and to (b) uphold the impugned recommendations of the learned FTO.

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

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.37/FTO/2019 dated 16.10.2019

Copy for information to:

1. Mr. Aftab Hussain Shah, S/o Anwr Hussain Shah, Mehay Road, Mohallah Ghous-e-Azam, Near Government Girls High School, Tehsil Saria Alamgir, District Gujrat
2. The Registrar, Federal Tax Ombudsman's, Islamabad
- ✓ 3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. The Commissioner, Inland Revenue, Regional Tax Office, Sialkot.
5. Master file.

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