

President's Secretariat (Public)  
 Aiwan-e-Sadr  
 ISLAMABAD  
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*Federal Board of Revenue  
 Versus  
 M/s Al-Shifa Trust, Rawalpindi*

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS /  
 RECOMMENDATIONS DATED 16.07.2019 PASSED BY THE FTO IN COMPLAINT NO. 508 &  
 511/ISB/IT/2019**

Kindly refer to your representation dated 02.08.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 02.08.2019 has been filed by the FBR against the recommendations of the learned FTO dated 16.07.2019, which is within limitation, thereby it has been held that:

**"FBR to:**

- (i) **Direct the Commissioner-IR, CRTO Rawalpindi to re-visit the impugned orders dated 30.06.2018 in terms of Section 122A of the Ordinance, as per law; and**  
 (ii) **Report compliance within 45 days."**

2. The background of the matter is that the above mentioned identical complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against order dated 30.06.2018, passed under Section 170(4) read with Section 124 of the Income Tax Ordinance, 2001 (the Ordinance) rejecting refund for the Tax Years 2014 and 2015. Both the complaints having identical background were disposed of through a single consolidated order.

3. Before the learned FTO it was stated that the Complainant, a charitable trust established in 1991, is running eye hospitals throughout the country. According to the complainant the income of the trust is exempt from tax under part-1 of Clause 66(ii) of the Second Schedule to the Ordinance. However, in order to avoid withholding tax on various transactions, the trust is required to obtain specific exemption certificate from the Department (Deptt) under Section 159 of the Ordinance. The Deptt issues such certificates of exemption for a period of six months only and renewal for next six months always takes three to four week after submission of application. It was during these three to four weeks, that tax was deducted on the transactions of the trust. As entire income of the trust is exempted from tax, the Complainant filed returns of income for Tax Years 2014 and 2015 under Section 114(1) of the Ordinance, claiming refund of tax deducted amounting to Rs. 0.762 and Rs. 3.934 million, followed by refund applications under Section 170(2) of the Ordinance. The Deptt without considering the evidence produced, rejected refund applications for both the years vide order dated 21.11.2016 under Section 170(4) of the Ordinance. The Complainant assailed the rejection under Section 127 of the Ordinance. The Commissioner-IR (CIR (Appeals-III) Rawalpindi held that notice for production of supporting documents dated 02.09.2016 for compliance by 09.09.2016 was served on the Complainant on 08.09.2016 leaving actually only 01 day for compliance. The case was, thus, remanded back to the Deptt with the direction to provide reasonable opportunity of hearing to the Complainant to produce necessary evidence and thereafter pass speaking order under Section 170(4) of the Ordinance. However the Deptt without considering the evidence, again rejected refund under Section 170(4) read with Section 124 of the Ordinance, through a consolidated order dated 30.06.2018.

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4. The complaints were forwarded to the Secretary, Revenue Division Islamabad. In response thereto, the CIR, Corporate, RTO, (CRTO) Rawalpindi submitted the parawise comments vide letters dated 15.03.2019 and 18.04.2019. At the outset, preliminary objection regarding bar of jurisdiction under Section 9(2)(b) of the FTO Ordinance was raised.

5. After due consideration, the learned FTO has passed the aforementioned order.

6. The instant representation has been made by the FBR. Mr. M. Hayat Khan, Deputy Commissioner IRS has represented the FBR. On the other hand, Mr. Zahid Mehmood, Advocate on behalf of M/s Al-Shifa Trust, Rawalpindi has appeared. Both sides have been afforded opportunity of hearing.

7. It was the grievance of the complainant that the order had been passed without due application of mind and considering the essential aspects of the matter. After appreciating the matter the learned FTO has made the recommendations which are merely to the extent, directing the Commissioner-IR, Corporate RTO Rawalpindi to re-visit the impugned order for 30.06.2018 in terms of Section 122A of the Ordinance, as per law. The order is aimed at to satisfy the mandate of law and principles of natural justice. The objection as to the availability of appellate remedy in the circumstances does not hold good. The recommendations of the learned FTO are in accord with law. Needless to state that the mention of Section 122A even if is ignored, the learned FTO otherwise could pass an order of the nature. In the circumstances, the representation of the Agency is liable to be rejected.

8. Accordingly, Hon'ble President has been pleased (a) reject the instant Representation of FBR 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.59/FTO/2019 dated 18.10.2019

Copy for information to:

1. M/s Al-Shifa Trust, C/o Mr. Rizwan Ullah Asghar, Executive Director, Jhelum Road, Rawalpindi.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
- ✓ 3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. The Commissioner Inland Revenue, Inland Revenue Services (IRS) Office of the Commissioner – IR, Corporate Zone, Regional Tax Officer, Rawalpindi.
5. Mr. Nadeem Tirmizi, FCA, 302B, 3<sup>rd</sup> floor, Evacuee Trust, Complex Aga Khan Road, F-5/1, Islamabad.
6. Master file.

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