

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

*Federal Board of Revenue
Versus
M/s .GMKT Ventures (Fri-Chiks), Sargodha*

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 21.05.2019 PASSED BY THE FTO IN COMPLAINT NO. 526-527-528-529-530-531-532-533-534-535/LHR/IT/2019

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

1. This order disposes of the following Representations:-
 1. No. 38/FTO/2019- C.NO. 526//LHR/IT/2019
 2. No. 40/FTO/2019- C.NO. 527//L HR/IT/2019
 3. No. 41/FTO/2019- C.NO. 528//LHR/IT/2019
 4. No. 42/FTO/2019- C.NO. 529//LHR/IT/2019
 5. No. 43/FTO/2019- C.NO. 530//LHR/IT/2019
 6. No. 44/FTO/2019- C.NO. 531//LIIR/IT/2019
 7. No. 45/FTO/2019- C.NO. 532//LHR/IT/2019
 8. No. 46/FTO/2019- C.NO. 533//LHR/IT/2019
 9. No. 47/FTO/2019- C.NO. 534//LHR/IT/2019
 10. No. 48/FTO/2019- C.NO. 535//LHR/IT/2019

The above Representations have been filed by the FBR, against the findings of the FTO dated 21.05.2019, whereby it has been held that:

“FBR to-

- i. *Direct the Commissioner-IR, Sargodha to re-visit the impugned order for Tax Years 2009 to 2018 in terms of Section 122A of the Ordinance, as per law;*
- ii. *Report compliance within 45 days.”*

2. The background of the matter is that the above mentioned ten (10) identical complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against rejection of refund, for Tax Years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018 as a consequence of non-adjustment of the refund against the demand pertaining to Tax Year 2012. As the parties, facts and issues in all the ten (10) complaints were identical; these were disposed of through a single consolidated order by the learned FTO.

3. The Complainant, an Association of Person (AOP) running a Fast Food restaurant, contended that returns of income for Tax Years 2009 to 2018 were filed under Section 114(1) of the Income Tax Ordinance, 2001 (the Ordinance) claiming cumulative refund amounting to Rs. 1.303 million. According to the Authorized Representative (AR), the Department (Deptt) completed the amended assessment for the Tax Year 2012 vide order dated 30.06.2018 under Section 121(1)(a&b) of the Ordinance, creating tax demand amounting to Rs. 1.113 million. The Complainant requested the Deptt vide letter dated 28.09.2018, for adjustment of refund amounting Rs. 1.303 million against the tax liability outstanding for Tax Year 2012. The Deptt instead of adjusting the refund against the outstanding tax demand for Tax Year 2012, rejected the refund for Tax Years 2009 to 2018 vide orders dated 28.02.2019. The complainant contended that the Deptt had unlawfully rejected refund of the Complainant for Tax Years 2009 to 2018, hence the complaints filed before the learned FTO.

4. The complaints were sent by the learned FTO for comments to the Secretary, Revenue Division. It was contended that the Complainant did not file refund applications for the Tax Years 2009 to 2018 as prescribed under Section 170(2) of the Ordinance. In response to recovery notice for the Tax Year 2012, the Authorized Representative (AR) of the Complainant simply filed an application on 28.09.2018 requesting therein adjustment of refund, declared in returns of income for the Tax Years 2009 to 2018 without filing refund applications and annexing relevant documentary evidence of tax deduction / payment. The OIR concerned issued letters / reminders for production of applications of refund and evidence of tax payment. In compliance, the Complainant filed written reply but again without requisite details / documents. The request of the Complainant to adjust the amount declared in returns of income for Tax Years 2009 to

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2018 as refund against the tax demand payable for Tax Year 2012 was found unsatisfactory and rejected vide impugned orders under Section 170(4) of the Ordinance.

5. Both sides were heard by the learned FTO, and passed the aforementioned order. Hence the instant representations by the Agency / FBR. Mr. Shakeel Ahmed Shakeel Additional Commissioner RTO Sargodha has represented the FBR. On the other hand, Mr. Ghulam Murtaza Advocate and Mr. Waseem Akbar ITP - M/s GMKT Ventures (Fri-Chiks), Sargodha has appeared. Both sides have been afforded opportunity of hearing.

6. A thorough perusal of record and examination of all documents on record has been undertaken. It is evident that the learned FTO has made the recommendations which are merely to the extent, directing the Commissioner-IR, Sargodha to re-visit the impugned order for Tax Years 2009 to 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. It is the Agency to decide the matter as per law. The Agency has full powers to decide it on merits in accordance with the provisions of law. In the circumstances, the findings 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 the nature. In the circumstances, the representations are liable to be rejected.

7. No justification has been made out to upset the reasoning of FTO. Thus, these representations are devoid of any merit and are liable to be rejected.

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

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

The Chairman,
Federal Board of Revenue,
Islamabad.

1. No.38/FTO/2019 dated 16.10.2019
2. No.40/FTO/2019 dated 16.10.2019
3. No.41/FTO/2019 dated 16.10.2019
4. No.42/FTO/2019 dated 16.10.2019
5. No.43/FTO/2019 dated 16.10.2019
6. No.44/FTO/2019 dated 16.10.2019
7. No.45/FTO/2019 dated 16.10.2019
8. No.46/FTO/2019 dated 16.10.2019
9. No.47/FTO/2019 dated 16.10.2019
10. No.48/FTO/2019 dated 16.10.2019

Copy for information to:

1. M/s .GMKT Ventures (Fri-Chiks), 2-A, University Road, Sargodha.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. The Commissioner Inland Revenue, Zone-1, Regional Tax Office, Sargodha.
5. Ch. Ghulam Murtaza, Advocate High Court, Qutab Law Associates, JZ House 51-3, Link Lawrence Road, Lahore (Mobile 03004118256)
6. Master file.

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