

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

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Mr. Manzoor Ahmad Shad, Nankana Sahib  
Versus  
Federal Board of Revenue

**REPRESENTATION PREFERRED BY MANZOOR AHMAD SHAD, NANKANA SAHIB AGAINST FINDINGS / RECOMMENDATIONS DATED 25.05.2018 PASSED BY THE FTO IN COMPLAINT NO. 0626/MLN/IT/2018**

I am directed to refer to your representation dated 23.10.2018 on the above subject and to say that the President has been pleased to pass the following order:

2. This Representation dated 23.10.2018 has been filed by the complainant—Mr. Manzoor Ahmad Shad against the findings of the FTO dated 25.05.2018 whereby it has been held:

“During hearing of the complaint on 15.05.2018, the DR undertook to dispose of refund claim on completion of the process of verification. In view of this undertaking, there is no need to go into the details of preliminary objection raised by the Deptt. The complaint stands dispose of with the direction to the Deptt to complete the process of verification as per undertaking and settle the refund claim, as per law, expeditiously. Case file be consigned to record”.

3. Brief facts of the case are that the complaint has been filed under Section 10(1) of FTO Ordinance, 2000 against non-issuance of refund for tax year 2017. Precisely, the complainant, a retired VP, Zarai Taraqati Bank Limited (ZTBL), Okara earned pensionary benefits. He served notice to the CIR for permission to elect for the amount to be taxed at the average rate of tax for the last three years in terms of Section 12(6) of the Income Tax Ordinance, 2001, which was granted vide letter No.1147 dated 15.11.2017. Subsequently, return of income for tax year 2017 was e-filed claiming refund of the excess tax deducted at Rs. 0.392 million. Application for refund was also e-filed on 21.12.2017 followed by reminders dated 23.02.2018 and 05.03.2018. but his all elicited no response.

4. 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 of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the CCIR, RTO, Sahiwal submitted comments vide letter No. C.No.CCIR Legal/RTO/SWL/2912 dated 02.05.2018 raising preliminary objection with regard to the jurisdiction of FTO on the basis of a reported case “CIR Vs Chicago Metal Works (2015 PTD 1913) wherein it is held that a person aggrieved by the failure of the Commissioner to pass an order under sub section (4) of Section 170 of the Ordinance, within the time specified in that sub section may prefer an appeal. Further stated that verification of tax deductions is underway and the refund claim would be disposed of at the earliest. Thus, the FTO has issued aforementioned orders.

5. Hearing of the case was held on 04.12.2018. Mr. Muhammad Naeem Afzal Khan, Assistant Commissioner IR has represented the FBR. On the other hand, Mr. Manzoor Ahmad Shad Complainant himself has appeared for the hearing on the particular issue.

6. The instant representation has been filed by the complainant. The complainant has stated that he is a retired employee from ZTBL, Head Office, Islamabad. Moreover, the issue stand at time when the complainant prior to sanction dated of retirement benefits payment served a notice dated 22.07.2016 seeking permission to elect for amount to be taxed at average rate computed in accordance with taxable income for three preceding tax years. The notice referred to above was followed by complainant personal visits for number of times but worthy Commissioner, respondent No. 1 did not let the complainant know the fate and meantime the management of the bank made payment of benefits vide letter dated 24.08.2016 and deducted tax amounting to Rs.809,094/-. Since before the tax year was going to close on 30.06.2017, the complainant dropped a reminder dated 21.06.2017 upon the Respondent No. 1. Needless to add that during this period the complainant handed over to him similar nature of two precedent permissions. Ultimately he the Respondent No.1 awarded the called for permission letter dated 15.11.2017.

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7. The complainant has stated that since he was a regular income tax return filer so in return filing for the tax year 2017 he took into account the referred above permission letter thus an amount of Rs. 392,963/- become as tax paid in excess. Accordingly, the complainant lodged an application for refund of tax amount paid in excess and enclosed all relevant papers. This application was followed by reminder letter dated 23.02.2018 as well as of 05.03.2018 and when the Respondent Nos. 1 & 2 did not pass the refund amount within the period vested with them in accordance with law, the complainant filed a complaint before the FTO on 05.04.2018. The representative of FTO scheduled hearing and conducted the same on 15.05.2018 and report findings vide letter of even number dated 28.05.2018.

8. The complainant has pleaded that the Respondent No. 2 who attended the complaint hearing before the FTO did not have waited for findings of the FTO become in personal victimization of the complainant by that way on 22.05.2018 and served upon the complainant a Show Cause Notice for compliance within 3 days. He also threatened that in case of non compliance or un-satisfactory reply the refund claim would be rejected. He further to that and without due consideration for findings of the complaint passed an order dated 31.05.2018 and rejected the partial amount of refund claim of Rs.348,039/- against that action of Respondent No. 2, the complainant lodged an application before the FTO for contempt proceedings. The FTO Respondent No. 3 in connivance with others at all has not went to redress complainant's grievances and after complainant three reminders now through letter No. 0626/2018-Imp dated 05.10.2018 has enclosed with report dated 29.08.2018 received from the department adding further that as the department has disposed of complainant's claim of refund, so no further action is called for.

9. The complainant has underscored that in the wake of all above submissions and facts it has come up that the respondent No. 1 & 2 have played malafide role at each step and in connivance with respondent No. 3 have deprived off the complainant from complainant established refund claim of tax paid in excess.

10. The complainant has requested to register his appeal for acceptance to redress grievances for fulfilling the norms of justice.

11. On the other hand, the representative of the Agency has pointed out that the complainant has been retired from the Zarai Taraqiati Bank Limited, Zonal Office, Okara after attaining the age of superannuation. He was paid retirements benefits as per the policy of the bank. The complainant prayed in a complaint filed before the honourable FTO that the benefit of the provisions of sub-section (6) of section 12 read with sub-clause (iii) of clause (e) of sub-section (2) of section 12 of the Income Tax Ordinance, 2001 might be granted to him, and refund of Rs.392,963/- might be issued to him for the tax year 2017. The case of the complainant was not covered under the aforementioned provisions of law, that rendered the refund claim as incorrect. Therefore, in accordance with the directions of the Hon'ble Federal Ombudsman given vide para 4 of his order dated 25.05.2018 in Complaint No.0626/MLN/IT/2018, the refund claim of the complainant for the tax year 2017 was disposed of by passing order under sub-section (4) of section 170 of the Income Tax Ordinance, 2001 on 31.5.2018. After passing of the said order, the matter has become appealable and does not fall in the jurisdiction of the FTO in accordance with the provisions of section 9(2)(b) of the of the Office of Federal Tax Ombudsman Ordinance, 2001. The contents of the representation indicate that the same position has been conveyed to the taxpayer by the FTO due to which the complainant has used the inappropriate term of "connivance" (with authorities) for the FTO.

12.- The representative of the Agency has pleaded that no grievance arises out of the said order dated 25.5.2018 of the FTO in Complaint No. 0626/MLN/IT/2018, due to which the representation is totally uncalled for. The FTO directed that the refund claim should be disposed of as per law. It was disposed of by the assessing officer through an order passed w/s 170(4) of the Income Tax ordinance 2001. As the remedy of appeal against the said order u/s 170(4) passed by the assessing officer is available to the complainant, the matter should have been agitated on the proper appellate forum. Hence, the representation is not competent.

13. The representative of the Agency has prayed that the representation filed by the complainant may be rejected being barred by time and devoid if any merit.

#### Analysis/Conclusion

14. After perusal of record, examination of all documents and detailed hearing, it has been noted that FTO has made recommendations which are only to the extent that during hearing of the complaint on 15.05.2018, the DR undertook to dispose of refund claim on completion of the process of verification. In view of this undertaking, there is no need to go into the details of preliminary objection raised by the Deptt. The complaint stands dispose of with

the direction to the Deptt to complete the process of verification as per undertaking and settle the refund claim, as per law. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the findings of the learned FTO are quite sustainable and the complainant has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the recommendations/findings of FTO are sustainable and maintainable being unexceptional in nature.

15. It is pertinent to mention that FBR vide their order dated 31.5.2018 has already communicated that "as the taxpayer/ refund claimant is not ready to substantiate his claim of refund with proper documentary evidence under the relevant provisions of law as referred above earlier in this order, therefore, his claim of refund of Rs.392,963/- is rejected. In view of the above mentioned facts and circumstances of the case and evidence available on record determination of refund subject to pending verification is calculated in the manner as under: -

Taxable Income as Declared Rs.4,771,250 -

Income Tax on above declared income as per normal slab rates Rs. 809,094 -

The taxpayer claimed income tax deductions amounting to Rs.854,018 - detailed as under: -

- 1) As per copy of certificate showing deductions of income tax amounting to Rs.809,094/- on salary under section 149 of the Ordinance.
- 2) As per copy of certificate showing income tax deductions amounting to Rs.44,273/- on cash - withdrawals from bank under section 231A of the Ordinance.
- 3) As per copy of certificate amounting to Rs.523/- under section 236 of the Ordinance on mobile Phone No. 03017256164.
- 4) As per copy of certificate amounting to Rs. 128 - under section 236 of the Ordinance on mobile Phone No. 03006943909.

For verification of veracity of certificates and evidence of payment of the income tax deductions into the government treasury under proper income tax head, letters followed by reminders have been issued for verification of veracity of the certificates of deductions as mentioned at (1) and (2) above. On receipt of verification the credit shall be given and in case the total amount is verified credit of Rs.854,018/- will be given which would result in creation of refund amounting to Rs.44,924/- only instead of Rs.392,963/-

Issue copy of this order to the taxpayer accordingly.

Demand Adjusted with Refund and Refund issues:

Period	Code	Head/Description	Amount
Refund rejected			
2017	9210	Refundable income tax	348,039/-"

16. It is not out of place to be mentioned that it is settled law that a suit instituted, appeal preferred and application made after a period of limitation prescribed there-for under the relevant statute shall be dismissed even if limitation has not been setup as a defence. Similarly, the Supreme Court of Pakistan in its judgment cited as 2005 SCMR 1349 has categorically held that no appellant has unfettered choice to file a representation/ appeal irrespective of time limit. If for not any other reason, his case stands fatally quashed on the ground of limitation alone, before this forum.

17. Needless to be mentioned that this representation has been filed by 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. However, the complainant can seek remedy available to him from the relevant forums under the law, if so desired.

18. Accordingly, the President has been pleased to (a) reject the instant Representation of Complainant namely Mr. Manzoor Ahmad Shad and (b) to uphold the impugned findings/recommendations of FTO.

Mr. Manzoor Ahmad Shad,  
R/o Chack No. 80/RB,  
Tehsil: Shahkot,  
District: Nankana Sahib.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

No. 53/FTO/2018 dated 07.01.2019

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.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)