

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

Federal Board of Revenue
Versus
Mr. Irfan Ullah, Gujranwala

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 29.12.2017 PASSED BY THE FTO IN COMPLAINT NO. 449/LHR/IT(344)/748/2017

I am directed to refer to your representation No. 4(748)S(TO-I)/2017, dated 22.01.2018 on the above subject and to say that the President has been pleased to pass the following order:

2. This Representation dated 22.01.2018 has been filed by the Agency-FBR against the findings of the FTO dated 29.12.2017 whereby it has been held:

"FBR to direct the Chief Commissioner-IR to-

- i. **Invoke the provisions of Section 122A of the Ordinance and cancel the impugned order dated 20.06.2016, passed without considering details filed by the Complainant;**
- ii. **Settle the refund due, as per law, and**
- iii. **Report compliance within 45 days."**

3. Brief facts of the case are that this complaint has been filed under Section 10(1) of the FTO Ordinance, 2000 against provisional assessment order under Section 122C of the Income Tax Ordinance, 2001 (ITO, 2001) dated 20.06.2016 for tax year 2011 and refund of the amount recovered through attachment of bank account.

4. Precisely, provisional assessment was made raising tax demand of Rs. 0.129 million on account of unexplained investment made in the purchase of a motor vehicle during the period relevant to tax year 2011. According to the Complainant, a notice bearing No. 504 dated 27.11.2012 was issued by the Department to explain the source of investment, which was duly complied with on 11.02.2013. The documentary evidence was provided in support of investment. Upto 21.06.2017, neither any notice nor any provisional assessment order was served upon the Complainant. Added that on 22.06.2017 the Manager, Habib Bank Limited Kamoke telephonically informed him that his bank account had been attached by the IR authorities for recovery of tax demand of Rs. 0.129 million. The Complainant vide letter dated 29.06.2017 followed by three reminders and repeated visits of the office asking for details, but to no avail.

5. The complaint was referred to the Secretary, Revenue Division, Islamabad in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013. The Chief Commissioner IR, RTO, Gujranwala vide letter dated 09.11.2017 forwarded comments of the Commissioner IR bearing No. 101 dated 08.11.2017. The Department submitted that proceedings were initiated on the basis of information that the Complainant purchased a motor vehicle for a consideration of Rs. 0.504 million during the period relevant to tax year 2011. Accordingly, notices under Section 114(4) and 116 of the Ordinance for filing of income tax return and wealth statement were issued. In response, the Complainant attended the proceedings, but failed to furnish return and other allied documents to substantiate investment. Similarly, notices issued under Section 111(1)(b) and 111(1)(c) of the Ordinance also remained un-responded, therefore, provisional assessment was finalized on 20.06.2016 creating tax demand of Rs. 0.129 million. The Complainant failed to deposit the tax demand within the due date, hence recovery was made through attachment of bank account by observing all the legal requirements.

6. The Department further contended that the matter relates to assessment and determination of income in respect of which legal remedy of filing appeal was available under the relevant legislation and as such this Forum had no jurisdiction to entertain the complaint in terms of Section 9(2)(b) of the FTO Ordinance. Concluded that exercising of provisional power under Section 122A of the Ordinance by the Commissioner without ascertaining the true facts of the case, would be fruitless and defeat the spirit of law.

7. On the contrary, the Authorized Representative (AR) contended that the Complainant neither received any notice nor copy of the order passed under Section 122C of the Ordinance till the date of filing of complaint. The documents submitted to the Department were misplaced by the officials due to which the Complainant suffered mental agony. Both the parties heard and record perused by the FTO. Thus, FTO has issued aforementioned findings.

8. Hearing of the case was held on 13.03.2018. Mr. Zaigham Abbas, Additional Commissioner-IR has represented the FBR. On the other hand, Mr. Irfan Ullah Complainant himself has appeared for the hearing on the particular issue.

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9. The instant Representation has been filed by the Agency. The Agency has taken ground that the jurisdiction of FTO is barred under Section 9(2)(b) of the FTO Ordinance, 2000, the FTO cannot work as appellate authority. Reliance is placed on President Order No. 05/FTO/2016 dated 16.08.2016 and Order No. 20/FTO/2017 dated 15.03.2017.
10. The Agency has narrated that the FTO was not justified in directing to invoke provision of Section 122A of the Ordinance by considering the details filed by the taxpayer. Provisions of Section 122A of the Ordinance can be exercised by a Commissioner suo moto. Sub Section 2 of Section 122A empowers to Commissioner for the purpose of passing an order under Section 122A to make such inquiry as is necessary. Thus, exercising of the revisional power under Section 122A by the Commissioner, without ascertaining the facts of the case would do nothing but defeat the spirit of law. Reliance is placed on President Order No. 39/FTO/2017 dated 31.05.2017 and No. 107/FTO/2016 dated 01.09.2016.
11. The Agency has pleaded that the taxpayer did not fulfill the requirement of Section 122C of the ITO, 2001 as no requisite documents were filed within the time frame as envisaged in the law. The AR of the taxpayer Mr. Hafez Ullah Gujjar joined the proceedings in compliance to a Show Cause Notice and sought adjournment. However, before finalization of proceedings several opportunities were given to the taxpayer which remain un-complied. Despite proper service of the notice in accordance with Section 218 of the ITO, 2001, the taxpayer did not respond to the notice, accordingly, order under Section 122C of the Ordinance was passed. The FTO's findings/ recommendations are contrary to the facts available on record.
12. The Agency has stated that the taxpayer has taken plea that he filed documents before finalization of assessment under Section 122C of the Ordinance. Record has been threshed out regarding filing of the return and allied documents which reveal that the taxpayer is not on tax roll till date. Moreover, filing of return for tax year 2011 and allied documents is not verified from record of BTB Zone. The taxpayer contended that he had filed return of income, wealth statement and allied documents not in the BTB Unit where the assessment proceedings were carried out but in another BTB Unit i.e. BTB Unit-02. On verification of documents, it revealed that the taxpayer's contention is not correct and FTO was duly apprised of this fact in writing. However, the same was not discussed while giving findings/ recommendations.
13. The Agency has mentioned that the FTO was not justified to give findings/ recommendations by placing reliance on the proposal of the BTB Unit incharge wherein it was proposed to invoking provision of Section 122A of the Ordinance on the basis of contention of the taxpayer regarding filing of return of income and allied documents in some office other than the BTB unit holding jurisdiction over the case was made. It revealed that documents furnished by the taxpayer could not be verified from record. The report of the officer was sketchy and contrary to the facts of the case. Hence, the officer who submitted the proposal was issued an explanation on account of submission of a frivolous proposal contrary to the facts of the case. The FTO was accordingly intimated in this regard. But submissions made by this office had been totally ignored while making recommendations.
14. The Agency has prayed that the impugned decision/ findings of the FTO dated 29.12.2017 in Complaint No. 449/LHR/IT(344)/748/2017 may kindly be set aside.
15. On the other hand, the complainant has argued that FBR issued a notice vide No.504 dated 27.11.2012 and asked for income source against purchase of car having amount of Rs.50400/-. The complainant provided relevant documents through his legal advisor on 11.2.2013 and get acknowledgement from office of FBR. Later on no more notice was issued to him in this regard but he came to know on 22.6.2017 by Manager HBL Kamoke that FBR has drawn an amount of Rs.129600/- through his bank account attachment. He requested many times to Inland Revenue Officer/Unit Officer of FBR for details regarding debiting of Rs.129600/- from his bank account through attachment. After few days the unit officer handed over to him a copy of order u/s 122C of Income tax Ordinance 2001 taken against him on basis of one sided decision without hearing him. After receiving the photo copy of decision from office of FBR he provided the acknowledgement of handing over the record to the office of FBR on 11.2.2013. The unit officer observing the acknowledgement constituted a committee. The committee interrogated the matter and recommended that no doubt the tax payer Mr. Irfan Ullah provided the documents of his income sources to this office but same was misplaced by the office of FBR so the decision of FBR and debiting of amount Rs.129600/- through bank account attachment is unjustified.
16. The complainant has mentioned that the Inland Revenue Officer/Unit Officer wrote a letter to Commissioner FBR Gujranwala vide his office No.188 dated 26.10.2017 and requested to Commissioner for cancellation the order. However, the FBR totally deny the letter No.188 dated 26.10.2017 of unit officer and inquiry committee report. The FTO called the unit officer Mr. Mirza Muhammad Rafiquae Inland Revenue Officer kamoke on petitioner's personal request for hearing. Mr. Mirza Muhammad Rafiquae the unit officer was asked the detail by FTO regarding letter No.188 dated 26.10.2017. The unit officer admitted his office mistake and stated that the reply of tax payer was misplaced by his office due to which the double assessment was made. So the taxpayer was on his right and order u/s 122C of Income tax Ordinance 2001 should be cancelled. The FTO after hearing recommended for refund due in 45 days which was drawn by the FBR through bank account attachment of tax payer being unjustified. Now the unit officer admitted his mistake and request to FTO for cancellation the order 122C of Income tax Ordinance 2001 taken against the taxpayer again filed the representation in office of President of Pakistan.

The complainant has prayed that the representation of FBR may be rejected and FBR may be directed for refund of amount of Rs.129600/-to the complainant.

Analysis/Conclusion

17. After perusal of record, examination of all documents, and detailed hearing, it has been noted that IRO Gujranwala vide letter No.188 dated 26.10.2017 has communicated to Commissioner IR Gujranwala that the proceeding in the subject mentioned case were initiated by the Inland Revenue Officer BTB unit-02 on the basis of definite information available with him that the subject mentioned taxpayer made investment in the purchase of Motor Vehicle for a consideration of Rs. 504,000/- during the period relevant to tax year 2011 and certain notices were issued to the taxpayer but no compliance was made by the taxpayer except one time i.e. on 22.01.2012 when an application for adjournment was moved by the AR of the taxpayer seeking adjournment for 10.02.2013. Later on, assessment record in the case of Mr. Irfan Ullah s/o Muhammad Ashraf village Machrala Tehsil Kamoke was transferred to this office on the point of jurisdiction. As the case was going to be barred by time hence proceeding in this case were taken up by this office by issuing show cause notice for completion of provisional assessment u/s 122-C and specific notices for additions u/s 111(1)(b) & 111(1)(c) of the Income Tax Ordinance, 2001 but the taxpayer failed to make compliance of these notices. Resultantly, provisional assessment was finalized u/s 122C of the Income Tax Ordinance, 2001 on 20.06.2016 and a tax demand of Rs.129,600/- was created against the taxpayer. The taxpayer failed to file the return of income alongwith wealth statement, wealth reconciliation statement for the period ending on 30.06.2011 and sources of investment within 45 days of the receipt of demand notices, hence provisional assessment order was attained finality and thus recovery proceedings for an amount of Rs. 129,600/- were initiated against the taxpayer by issuing notice u/s 140 read with Rule 69 of the income Tax Rules 2002 was issued to the Manager Habib Bank Limited Kamoke Branch and some other banks for attachment of bank account with reference to CNIC of the taxpayer and the said amount was recovered from the bank account of the taxpayer maintained with Habib Bank Limited Kamoke Branch. Then the taxpayer filed an application to this office as well as certain applications to Commissioner IR stating therein that he had already submitted all the requisite documents in the shape of return of income for tax year 2011, wealth statement, wealth reconciliation statement for the period ending on 30.06.2011 and other documentary evidences regarding sources of investment made in the purchase of above said motor vehicle to the Inland Revenue Officer BTB unit-02 RTO Gujranwala. The taxpayer further stated that these documents were submitted properly in compliance the earlier notices issued by the Officer Inland Revenue BTB unit-02 the taxpayer also provided copies of those documents submitted to the BTB unit-02. On receipt of the above said application from the taxpayer as well as copies of documents provided by the taxpayer a letter was issued to the Assistant Commissioner Inland Revenue Broadening of Tax Base unit-02 RTO, Gujranwala bearing No. 16 dated 09.08.2017 by asking him that:-

"The taxpayer filed an application to this office stating therein that he had already submitted all the requisite documents in the shape of wealth statement, wealth reconciliation statement for the period ending on 30.06.2011 and other documentary evidences regarding sources of investment made in the purchase of above said motor vehicle to the inland Revenue Officer BTB unit-02 RTO Gujranwala. The taxpayer further stated that these documents were submitted properly in compliance to the earlier notices issued by IR office to the taxpayer. The taxpayer has also provided copies of those documents submitted to Commissioner IR in compliance to the earlier notices issued by IR office. But these documents were not placed on file and record was transferred to this office on the point of jurisdiction without the above reply of the taxpayer. Thus it seems that any of the officials of your office had kept these documents in his personal custody due to the reasons well known to him. You are therefore, requested that please furnish the above said reply of the taxpayer to this office and to fix responsibility of such negligence to initiate necessary proceeding as required under the law against the responsible official." But no reply has been received from the Assistant Commissioner Inland Revenue Broadening of Tax Base unit-02 RTO, Gujranwala. However, perusal of documents filed by the taxpayer reveals that return of income for tax year 2011 was filed by the taxpayer to the Inland Revenue Officer BTB unit-02 Gujranwala on 11.2.2013 through TFC-01, RTO Gujranwala which deemed to have been assessed u/s 120(1) of the Income Tax Ordinance 2001 prior to finalization of provisional assessment u/s 122C of the Income Tax Ordinance 2001 on 20.6.2016. As such provisional assessment finalized by the undersigned on 20.6.2016 is a double assessment for tax year 2011. It is therefore proposed that provisional assessment finalized by this office on 20.6.2016 may be cancelled being double assessment by invoking powers u/s 122A of the Income Tax Ordinance 2001 so that the sources of investment under consideration furnished by the taxpayer may be examined and feasibility to invoke provisions of section 122(5)(ii) of the Income Tax Ordinance 2001 may be viewed of,

As is evident from detailed report of IRO dated 26.10.2017, addressed to Commissioner IR Gujranwala as well as Additional Commissioner IR Gujranwala, a crystal clear mistake, which need immediate rectification, it is pertinent to mention that Section 221 of Income tax Ordinance 2001 regarding rectification of mistakes provides as follows:

“221. Rectification of mistakes. – (1) The Commissioner, the Commissioner (Appeals) or the Appellate Tribunal may, by an order in writing, amend, any order passed by 2[him] to rectify any mistake apparent from the record on 1[his or its] own motion or any mistake brought to 2[his or its] notice by a taxpayer or, in the case of the Commissioner (Appeals) or the Appellate Tribunal, the Commissioner.

3[(1A) The Commissioner may, by an order in writing, amend any order passed under the repealed Ordinance by the Deputy Commissioner, or an Income Tax Panel, as defined in Section 2 of the repealed Ordinance to rectify any mistake apparent from the record on his own motion or any mistake brought to his notice by a taxpayer and the provisions of sub-section (2), sub-section (3) and sub-section (4) shall apply in like manner as these apply to an order under sub-section(1).]

(2) No order under sub-section (1) which has the effect of increasing an assessment, reducing a refund or otherwise applying adversely to the taxpayer shall be made unless the taxpayer has been given a reasonable opportunity of being heard.

(3) Where a mistake apparent on the record is brought to the notice of the Commissioner 4[or] Commissioner (Appeals) 5[, as the case may be, and no order has been made under sub-section (1) before the expiration of the financial year next following the date on which the mistake was brought to their notice, the mistake shall be treated as rectified and all the provisions of this Ordinance shall have effect accordingly.

(4) No order under sub-section (1) may be made after five years from the date of the order sought to be rectified.”

The Appellate Authority may, on consideration of the appeal /representation and any other relevant material, confirm, set aside, vary or modify the decision of the Mohtasib in respect of which such appeal/representation is made. Thus application of Section 221 regarding Rectification of mistakes by FBR authorities has become essential. FBR is directed to advise the Chief Commissioner-IR to invoke the provisions of Section 221 of the Ordinance and cancel the impugned order dated 20.06.2016, passed without considering details filed by the Complainant and to settle the refund due, as per law within 30 days. 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 on merits and in accordance with the provisions of law. In such circumstances, this representation of the FBR is required to be disposed off in accordance with Section 221 of the Income Tax Ordinance 2001 in aforementioned terms.

18. Accordingly, the President has been pleased to disposed off the instant representation of FBR-Agency in above terms. Compliance is to be reported to the FTO within 30 days of the receipt of this order.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 05/FTO/2018 dated 19.04.2018

Copy for information to:

1. Mr. Irfan Ullah, S/o Muhammad Ashraf, R/o Machrala, P.O Emanabad, Tehsil: Kamoke, Gujranwala.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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