

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

Federal Board of Revenue
Versus
M/s Marvi International, Karachi

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 29.06.2018 PASSED BY THE FTO IN COMPLAINT NO. 766/KHI/IT/2018

I am directed to refer to your representation No. 4(766)S(TO-II)2018, dated 02.08.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 02.08.2018 has been filed by the FBR-the Agency against the findings of the FTO dated 29.06.2018 whereby it has been held:

"FBR to direct:

- i. The Commissioner-IR to settle the complainant's claim for additional payment for delayed refund for Tax Year 2013, after providing him opportunity of hearing, as per law;
- ii. Report compliance within 45 days".

3. Brief facts of the case are that the complaint has been filed in terms of Section 10(1) of the FTO Ordinance, 2000 against delay in issuance of additional payment for delayed refund for tax year 2013 in terms of Section 171(2)(a) of the Income Tax Ordinance, 2001 (ITO, 2001). Complainant, an individual engaged in import of electrical goods filed complaint No. 038/KHI/IT/2016 on account of delay in allowing appeal effect to the Commissioner-IR (CIR) (Appeals) order dated 18.06.2015. The complaint was disposed of vide order dated 26.09.2016 with the following recommendations:

"FBR to-

- i. Direct the Commissioner-IR to allow appeal effect to the CIR (Appeals) order dated 18.06.2015, as per law with 21 days; and
- ii. Report compliance within 07 days thereafter."

4. According to the AR, the Department allowed appeal effect and issued cheque of refund on 26.11.2016. after receipt of the cheque, the complainant applied for additional payment for the delayed refund in terms of Section 171(2)(a) of the Ordinance vide letter dated 16.01.2017 followed by reminders dated 07.03.2017, 13.03.2018 and 12.04.2018. However, despite repeated efforts of the complainant, the department has failed to issue additional payment for the delayed refund, which falls within the ambit of maladministration.

5. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, the Cir Zone-IV, RTO-II, Karachi submitted comments on 25.06.2017 which were subsequently revised on 28.06.2018. It was contended that the CIR (Appeals) had required the complainant to prove that the refund was due. The department thus issued notice under Section 170(4) of the Ordinance to the complainant to submit the required evidence to prove correctness of refund. The complainant submitted necessary details; verification of which was completed by the Assistant Commissioner-IR MCC Appraisal Karachi on 22.12.2016. The next day i.e. 23.12.2016, the refund order was passed and the complainant was issued refund cheque on 26.12.2016. Thus the complainant's claim of additional payment for delayed refund for tax year 2013 was not justified as after allowing appeal effect, the refund order for tax year 2013 was passed on 23.12.2016 and refund cheque was issued within 03 days on 26.12.2016.

6. The averments of both the parties have been given due consideration and available record perused. It is observed that sub section (2) of Section 171 of the Ordinance stipulates following three conditions when additional payment for delayed refund shall be treated as having become due:

Section 171 of the Ordinance reads as under:

- a. In case of refund required to be made in consequence of an order on an appeal to the Commissioner (Appeals), an appeal to the Appellate Tribunal, a reference to the High Court or an appeal to the Supreme Court, on the date of receipt of such order by the Commissioner-IR; or
- b. In the case of a refund required to be made as consequence of a revision order under Section 122A, on the date the order is made by the Commissioner-IR; or
- c. In another case, on the date the refund order is made

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{Explanation.- For removal of doubt, it is clarified that where a refund order is made on an application under sub Section (1) of the Section 170, for the purpose of compensation, refund becomes due from the date refund order is made and not from the date of assessment of income treated to have been made by the Commissioner-R under Section 120.}

7. From the above, it is clear that refund for tax year 2013 was made as a consequence of Cir (Appeals) order, therefore, the complainant is entitled to additional payment for refund for tax year 2013 in terms of Section 171(2) (a) of the Ordinance. Evidently, the complainant has applied for additional payment for delayed refund vide letter dated 16.01.2017 followed by reminders dated 07.03.2017, 13.03.2018 and 12.04.2018. However, despite his repeated efforts, the complainant failed to get any response from the department. The delay on part of the department to settle the complainant's claim for additional payment for delayed refund for tax year 2013 is thus evident. Thus, the FTO has issued aforementioned recommendations.

8. The instant representation has been filed by the Agency. The Agency has taken ground that in terms of Section 9(2)(ii) of the FTO Ordinance, 2000, the FTO does not have jurisdiction to inquire into the matters which relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the relevant Legislation.

9. The Agency has pleaded that the President has held that:

"There is no question on the facts that the jurisdiction of the FTO is barred u/s 9(2)(b) to investigate or inquire into the matter which relates to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulation relating to such assessment/ determination in respect of which legal remedy of appeal or review or revision is available under the relevant legislation. In case the Complainant was aggrieved of any action or inaction of the Agency, the complainant has the remedy to file an appeal to the Commissioner Appeals, Income Tax Tribunal, the High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. In such circumstance, where remedy of appeal was available, FTO could not interfere with could not pass orders under garb of maladministration".

10. The Agency has pointed out that refund in this case was issued consequent to order of Commissioner-IR (Appeals) on 26.12.2016. As per Section 171(2)(a) of the ITO, 2001 the refund becomes due in consequence of order of Commissioner-IR (Appeals) when it is received. But in this particular case, the Commissioner-IR (Appeals) directed the taxpayer to prove that the refund was due. As the taxpayer failed to prove it, the delay on the part of the taxpayer cannot be assigned to the department. The department consequently issued notice under Section 170(4) of ITO, 2001 to the taxpayer to submit the required evidences to prove his refund. The taxpayer submitted details which were verified by the Assistant Commissioner MCC Appraisal Karachi on 22.12.2016. The very next day i.e. 23.12.2016 refund order was issued to the taxpayer and on 26.12.2016 refund cheque was issued. Thus, the department has not delayed the issuance of refund by a single day. Rather, it was the taxpayer, as per the order of the Commissioner-IR (Appeals), who had to prove that the refund was due. The taxpayer himself delayed in proving the veracity of her refund claim. Therefore, the department cannot be held responsible for delay on the part of the taxpayer. Hence, as per Section 171 of the Income Tax Ordinance, 2001, the taxpayer has no right of compensation.

11. It is prayed that the impugned decision/ findings of the FTO in Complaint No. 0766/KHI/IT/2018 dated 22.05.2018 with consequent recommendations may be vacated by declaring it in excess of jurisdiction and being ultra vires.


12. On the other hand, the Complainant has filed his written comments on 24.08.2018 against the instant representation of FBR and supported the impugned recommendations/ findings of learned FTO with the request that the instant representation of the Agency may be rejected by the appellat forum.

Analysis/Conclusion

13. After perusal of record and examination of all documents, it has been noted that it is crystal cleared that FTO has made recommendations which are only to the extent to direct the Commissioner-IR to settle the complainant's claim for additional payment for delayed refund for Tax Year 2013, after providing him opportunity of hearing, as per law within 45 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 either way, on merits and in accordance with the provisions of law. Thus, the representation of the Agency is liable to be rejected.

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4. Accordingly, the President has been pleased to (a) reject the instant representation of the FBR and (b) to uphold the impugned findings/recommendations of FTO.



(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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The Chairman,
Federal Board of Revenue,
Islamabad.

No. 41/FTO/2018 dated 07.01.2019

Copy for information to:

1. Mrs. Aliya Akhter Jafrani, Proprietor: M/s Marvi International. N.P 10/28 Chaba Gali Jodia Bazar, Saddar Town, Karachi.
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)

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