

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

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Mr. Liaqat Ali, Lodhran  
Versus  
Federal Board of Revenue

REPRESENTATION PREFERRED BY MR. LIAQAT ALI, LODHRAN AGAINST FINDINGS /  
RECOMMENDATIONS DATED 31.07.2018 PASSED BY THE FTO IN COMPLAINT NO.  
0867/MLN/IT/2018

I am directed to refer to your representation No. NIL, dated 15.08.2018 on the above subject and to say that the President has been pleased to pass the following order:

2. This Representation dated NIL received on 15.08.2018 has been filed by the complainant namely Mr. Liaqat Ali against the revised findings of the FTO dated 31.07.2018 whereby it has been held:

"The preliminary objection regarding bar of jurisdiction has been examined and found to be misconceived as this is a case of delay in allowing appeal effect to the CIR (Appeals) orders against which no legal remedy of filing appeal is available in the law. The preliminary objection is thus overruled. Evidently, the CIR (Appeals) remanded back the matter vide orders dated 10.05.2018 for re-examination and passing fresh orders. Thus in terms of Section 124(1) of the Ordinance, the department was required to pass denovo orders within two years from the end of financial year in which the above orders are received by the Zonal CIR. In this case, the orders dated 10.05.2018 were received by the CIR on 11.06.2018; thus no delay is caused in terms of Section 124(1) of the Ordinance. Under the circumstances, the instant complaint is not only premature but deficient of any maladministration on the part of the Deptt. The DR, however, voluntarily assured to complete verification and disposed of refund for Tax Years 2009 to 2012 within 30 days, after proper verification, as per law. In view of supra, the complaint stands disposed of. Case file be consigned to record".

3. Brief facts of the case are that the complaint has been filed under Section 10(1) of the FTO Ordinance for delay in allowing appeal effect to the Commissioner-IR (CIR) (Appeals) Bahawalpur's orders dated 10.05.2018 for Tax Years 2009, 2010, 2011 and 2012. Precisely, on the same issue a complaint No. FTO/MLN/0000104/2017 filed on 11.05.2017 was decided with the following findings/ recommendations dated 17.08.2017:

"7. ....the complaint is disposed of with direction to the Deptt to dispose of complainant's refund applications through speaking orders after providing opportunity of hearing to the complainant and decide the issue as per direction of the CIR (Appeals) vide order dated 14.04.2017 at the earliest."

4. The department passed order under Section 170(4) dated 19.12.2017 and issued part refund to the extent of verification. The complainant preferred appeal against the above orders, whereby the CIR (Appeals) Bahawalpur vide order Nos. 355 to 354 dated 10.05.2018 annulled the same, with the following directions:

".....placing reliance on the judgments reported as 1994 SCMR 2232 and PLD 1990 Supreme Court 666, the impugned orders are annulled with the direction to proceed as per law after providing proper opportunity of being heard. The assessing officer is directed to verify the deposition of tax in to Government Treasury from the withholding agents' banks and issue refund accordingly as per law".

5. The complainant thereafter approached the department vide application dated 20.05.2018 requesting appeal effect under Section 124 of the Ordinance. When failed to get any response, he has filed the instant complaint.

6. 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 Federal Ombudsmen Institutional Reforms Act, 2013. The Chief Commissioner-IR, RTO, Bahawalpur vide letter No. 203 dated 11.07.2018 forwarded comments of the Commissioner-IR Bahawalpur Zone dated 10.07.2018 raising preliminary objection regarding bar of jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance. Reliance was placed on the orders of the President in C.No. 564/LHR/ST(157)999/13 (M/s Khalid Modern Industries (Pvt) Ltd, Hasilpur) and No. 154/KHI/ST(66)/527/2015 (M/s Libra International, Karachi). On merits, it was contended that the CIR (Appeals) orders dated 10.05.2018 were received by the Zonal CIR on 11.06.2018. In terms of Section 124(1) of the Ordinance, appeal effect was required to be given within two years from the end of financial year in which orders of the CIR (Appeals) were served on the Zonal CIR. Hence, no maladministration has been caused in the instant case.

7. During the course of hearing, the AR contended that documentary evidence has been provided to the department. The DR on his part assured that after completing necessary verification balance refund for Tax Years 2009 to 2012 would be disposed of within 3 days, as per law. The averments of both the parties have been given due consideration and record perused by the FTO and made the above mentioned recommendations.

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8. The instant representation has been filed by the complainant. The complainant has taken ground that the findings of the FTO are bad in law and against the facts of the case. The FTO has totally ignored the contents of the complaint, the cause of which was the discriminatory treatment of the department as pointed out in Para 10 of the complaint and clear violation of Article 25 of the Constitution of Pakistan without any justification.

9. The complainant has underscored that the FTO has further ignored the pray of the petitioner which was that of committing the offence of misuse of powers, denial of law and discriminatory act of the departmental authorities as nothing has been offered by his honor on the main allegation of the complaint. The FTO has no jurisdiction to interpret law under Section 9(2)(b) of the FTO Ordinance, 2000 and as such he was not justified to determine the sub section of Section 124 of Income Tax Ordinance, 2001 to give effect to the appellate order.

10. The complainant has pleaded that the FTO has erred to conclude that the Commissioner-IR (Appeals) remanded back the matter vide his order dated 10.05.2018 re-examination and passing fresh orders. Further, the department in terms of Section 124 (1) of the Ordinance was required to pass denovo order within two years from the end of financial year in which the above orders are received by the Zonal CIR.

11. The complainant has asserted that the FTO has misconceived the provision of law in favor of the department as the Commissioner-IR (Appeals) Bahawalpur has allowed direct relief, as operative part of his order speaks that in view of above situation and placing reliance on judgment reported as 1994 SCMR 2232 and PLD 1990 Supreme Court 666, the impugned order is annulled with the direction to proceed as per law after providing proper opportunity of being heard. The assessing officer is required to verify the deposition of tax into Govt. Treasury for the withholding agent/ banks. So, the case of the Petitioner which falls under the ambit of sub section (4) of Section 124 of the said Ordinance not the sub section (1) of the said Section 124 of the Income Tax ordinance, 2001 as ordered by the FTO.

12. The complainant has contended that on favor granted by the FTO to the department the Petitioner stands deprived from his legal right which caused to huge financial loss to him as under the provision of sub section (4) of Section 124 of the said Ordinance, the department is obliged to give effect to the order of the Commissioner-IR (Appeals) within two months of the date the Zonal Commissioner is served with the order and after the order of the FTO department has been granted a time of more than two years. Any other relief seems appropriate under the law may be allowed.

13. The complainant has prayed that the findings of the FTO may be set aside and the concerned authorities of the Agency, FBR may be directed to give appeal effect under Section 124(4) of the Income Tax Ordinance, 2001 and take strict action against the authorities of Inland Revenue Service of Regional Tax Office, Bahawalpur who committed the offence of misuse of powers, discrimination of law and denial from law.

14. On the other hand, the Agency has filed comments against the instant representation of Complainant on 29.08.2018 and supported the impugned recommendations findings of learned FTO with the request that the representation of Complainant may be rejected.

**Analysis/Conclusion**

15. After perusal of record and examination of all documents, it has been noted 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 relate to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulations 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.

16. It has been settled by the Supreme Court of Pakistan in case of Mst. Kaniz Fatima reported in 2001 SCMR 1493, that where a particular statute provides self contained machinery for determination of questions arising under the statute and law provides a remedy by appeal or revision to another forum fully competent to give any relief, any indulgence to the contrary by any other forum is bound to produce a sense of distrust in statutory forums and writ petition will not be maintainable without first availing the alternate statutory legal remedy. Consequently, the Complainant's representation is liable to be rejected and the orders of FTO is required to be maintainable and sustainable being unexceptional in nature. However, the complainant can seek remedy available to him from the relevant forums under the law if so desired.

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.

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Accordingly, the President has been pleased to reject the instant representation of complainant namely Mr. Liaqat Ali and the impugned recommendations/ findings of learned FTO are upheld.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

Mr. Liaqat Ali.  
C/o Muhammad Kashif Siddique,  
ITP/AR, Kashif & Company,  
Ghosia Chowk,  
Lodhran.

No. 44/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)

250