

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

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Dr. Altaf Mohy-ud-Din, Khanewal  
Versus  
Federal Board of Revenue

**REPRESENTATION PREFERRED BY DR. ALTAF MOHY-UD-DIN, KHANEWAL AGAINST FINDINGS / RECOMMENDATIONS DATED 19.09.2018 PASSED BY THE FTO IN COMPLAINT NO. 1129/MLN/IT/2018**

I am directed to refer to your representation No. NIL, dated 16.10.2018 on the above subject and to say that the President has been pleased to pass the following order:

2. This Representation dated 16.10.2018 has been filed by the Complainant—Dr. Altaf Mohy-ud-Din against the findings of the FTO dated 19.09.2018 whereby it has been held:

“In view of the foregoing discussion, the complainant has failed to make out case of maladministration against the Deptt, therefore, the complaint stands rejected. 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 Federal Tax Ombudsman Ordinance, 2000 against issuance of Show Cause Notice dated 20.06.2018 under Section 122(5A) read with Section 122(9) of the Income Tax Ordinance, 2001 for amendment of assessment for tax years 2016 and 2017.

4. The complainant, an individual, deriving income from medical profession, e-filed returns of income for the tax year 2017 under Section 114(1) of the Ordinance declaring total income of Rs. 0.737 million.

5. The return of income for tax year 2017 was taken to be assessment order in terms of 120(1)(b) of the Ordinance. Subsequently, the Additional Commissioner-IR (ACIR) Khanewal RTO Multan issued SCN dated 20.06.2018 under Section 122(5A) read with Section 122(9) of the Ordinance for amendment of assessment for tax year 2017. According to the AR, the issues raised in the impugned notice does not make the order erroneous or prejudicial to the interest of revenue. The requisitions of these documents constitute fishing and roving inquiries which is not within the domain of ACIR. The ACIR has thus acted unlawfully that tantamount to maladministration, hence this complaint.

6. The complaint was sent for comments to the Secretary Revenue Division in terms of Section 10(4) of FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, Chief Commissioner-IR, RTO, Multan submitted through letter dated 29.08.2018 comments of the Commissioner-IR, Multan Zone dated 29.08.2018. Preliminary objection regarding bar of jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance was raised on the basis of various Presidential Order Nos. 88/FTO/2013 dated 05.06.2016, 77/FTO/2015 dated 09.06.2016, 73/2011/Law (FTO) dated 12.06.2016 and 564/LHR/ST(157)/999/13 (Ms. Khalid Modern Industries (Pvt) Ltd, Hasilpur). Reliance was also placed on judgments of Supreme Court of Pakistan reported as 2001 SCMR 1493 and Lahore High Court in WP No. 31129 of 2013 and in WP No. 711 of 2018. On merits, it was contended that the notice issued under Section 122(5A) read with Section 122(9) of the Ordinance was legal as the complainant had been provided with opportunity of hearing to explain his position with regard to issues raised in the Show Cause Notice. The complainant instead of making compliance to queries opted to file the instant complaint.

7. During the hearing proceedings before FTO, the AR reiterated his narrative. The DR contended that no adverse inference has been drawn as yet only SCNs had been issued seeking clarification from the complainant. He contended that after receiving reply to SCN proceedings would be finalized in accordance with law. Both the parties heard and record perused.

8. Evidently, the complainant has challenged the issuance of Show Cause Notice dated 20.06.2018. Legally, mere issuance of Show Cause Notice could not be challenged as the complainant is required to file reply to the same with his defense and wait for some order. Islamabad High Court has held in WP No. 1238/2013 (Auditor General of Pakistan V FTO) that challenge to a Show Cause Notice is not different than filing a petition on the basis of an apprehension or a speculation. Such a petition is premature for adjudication. In this view of the matter, mere issuance of Show Cause Notice for tax year 2017, do not constitute maladministration. Thus, FTO has issued aforementioned orders.

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236

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9. The instant Representation has been filed by the complainant. The complainant has stated that the Petitioner, an individual, e-filed his returns of income for the tax year 2017 on e-portal of FBR under Section 114(1) of Income Tax Ordinance, 2001 which was taken to be an assessment order in terms of Section 120(1)(b) of the of Income Tax Ordinance, 2001. The Petitioner, later on, received Show Cause Notice No. 2114 dated 20.06.2018 under Section 122(5A) of the of Income Tax Ordinance, 2001 from the Additional Commissioner Inland Revenue, Khanewal Range, Zone Multan, RTO, Multan without any cause of action, seeking certain documents and explanation on the presumed cash withdrawals, which were not occurred. If the impugned cash withdrawals would have been occurred, even then, it would be the legal obligation of bank officer and not of the Petitioner, to whom the Additional Commissioner intends to punish.

10. The complainant has underscored that the issuance of Show Cause Notices by Additional Commissioner Inland Revenue, Khanewal Range, under Section 122(5A) of Income Tax Ordinance, 2001 was contested before the FTO on the ground that it was with malafide intention and without jurisdiction. The same is reproduced below:

"The points raised in the notice may be called the deficiencies of the return Section 122(5A) did not permit the assessing officer to indulge in seeking details, documents, record and explanation as the same constitutes fishing and roving inquiries. The documents could at the had most be called u/s 120(3) of the of Income Tax Ordinance, 2001, which related to making up deficiencies but did not constitute erroneous or prejudicial to the interest of revenue even after amendment by Finance Act, 2012. The requisition of documents u/s 120(3) is not within the domain of Add: CIR. Reliance is sought from the Judgments reported as 2012(109) Tax 85 and 2014 PTD 2085, wherein a question has been answered in affirmative as under:

"Whether making inquiries or seeking information, details, documents and record from taxpayer is against spirit of Section 122(5A) even after amendment by Finance Act 2012—Held yes".

11. The complainant has stated that the FTO rejected the complaint of the Petitioner without considering merits merely on the basis of an irrelevant case law.

12. The complainant has taken ground that the findings/ recommendations of the FTO are bad in law and against the facts of the case. The FTO has totally ignored the contents of the complaint of the Petitioner, issuance of Show Cause Notices dated 20.06.2018 under Section 122(9) of the Ordinance seeking action under Section 122(5A) of the Ordinance without any cause of action and on presumptions irrelevant to the Petitioner.

13. The complainant has pleaded that the FTO has also ignored the commission of offence of misuse of powers, denial of law and discriminatory act of the departmental authority as nothing has been considered/ discussed by his honor on the main allegation of the complaint in his findings. The FTO has erred to conclude that the issuance of Show Cause Notice could not be challenged as the complainant is required to file reply to the same in his defense and wait for order. The Petitioner submitted his reply properly on 25.06.2018 under protest. However, issuance of Show Cause Notice dated 20.06.2018 by the Additional Commissioner Inland Revenue, Khanewal without any cause of action and based on irrelevant grounds constituting maladministration in terms of Section 2(3)(c) of the FTO Ordinance, 2000 was challenged before the FTO.

14. The complainant has contended that the FTO has also erred to reply upon the judgment of Islamabad High Court where it was held in *Writ Petition No. 1238/2013 (Auditor General of Pakistan versus FTO)* that challenge to show cause notice is not different than filing a petition on the basis of an apprehension or a speculation. Such a petition is premature for adjudication. This is not identical to the case of the Petitioner as the Petitioner had responded to the Show Cause Notice within the time allowed. The FTO has ignored the provisions of Section 120(3) and 122(5) of the income tax law which could have been exercised by the authority below having jurisdiction and in the presence of legal remedy the Additional Commissioner Inland Revenue, Khanewal Range, Zone Multan had no jurisdiction to issue the said Show Cause Notice under Section 122(5A). The FTO has misconceived the provisions of law in favour of the department.

15. The complainant has expressed that on favour granted by the FTO to the department, petitioner stand deprived from his legal right which has provided the departmental authority to cut the throat of the petitioner. Any other relief seems appropriate under the law may be allowed.

16. The complainant as prayed that the findings/ recommendations of the FTO may be set aside and the concerned authorities of the Agency, FBR may be directed to withdraw the notice dated 20.06.2018 issued under Section 122(5A) of the of Income Tax Ordinance, 2001.

17. Hearing of the case was held on 27.11.2018. Mr. Mohammad Sultan, Additional Commissioner-IR has represented the FBR. On the other hand, the Complainant has not attended the hearing despite issuance of notice on 13.11.2018.

237

18. Section 15 of Federal Ombudsmen Institutional Reform Act 2013, provides that "Personal hearing.-It shall not be necessary for the President or the Ombudsmen to give personal hearing to the parties and the matter may be decided on the basis of available record and written comments filed by the Agency." The President of Pakistan in Case No.F.267-WMS/2002 dated 30.7.2002 has already held that "the complainant has contended that he was not heard by the Mohtasib. Perhaps he intends to say that he was not heard orally. To afford hearing is an established principle of natural justice but hearing does not mean only to hear orally. Hearing includes hearing through papers, and in this case the complainant and the Agency have been heard through papers. This point fails." Supreme Court of Pakistan (2006 SCMR 382) [Federation of Pakistan through Secretary Education, Islamabad Vs Professor Dr. Anwar and 2 others] has held that "it is to be seen that the opportunity of hearing is not confined to the personal hearing rather it may also be in the form of written reply and thus as per scheme of law in a representation to the President against the order of Ombudsman it is not possible for the President to provide personal hearing to the parties in such representation therefore, inviting the comments written arguments in reply to the representation by the concerned quarters would be considered sufficient compliance of the law..."

19. Mr. M. Sultan Additional Commissioner Inland Revenue, RTO, Multan has appeared and provided a written statement from the complainant namely Dr. Altaf Mohy-ud-Din indicating as under:-

**"Withdrawal of Representation-**

I Dr. Altaf Mohy-ud-Din CNIC 36103-8029595-7 hereby withdrawn representation filed before the Honorable President Islamic Republic of Pakistan.

Sd/-

(Dr. Altaf Mohy-ud-Din)

Peoples Colony Khanewal"

The above statement of the complainant has also been confirmed on the telephone No.(0300-6880027).

20. In the circumstances, the instant Representation complaint of the complainant is required to be disposed off as being in-fructuous as the issue has already been settle down between the complainant as well as the Agency/FBR as per statement of the complainant mentioned supra duly signed by the complainant namely Dr. Altaf Mohy-ud-Din and the subject representation has been withdrawn.

21. Accordingly, the President has been pleased to dispose off the instant representation of the complainant namely Dr. Altaf Mohy-ud-Din in the above terms.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

Dr. Altaf Mohy-ud-Din,  
R/o House No. 12, Street A,  
Peoples Colony,  
**Khanewal.**

**No. 47/FTO/2018 dated 08.01.2019**

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)

238