

President's Secretariat (Public)  
Aiwan-e-Sadr  
ISLAMABAD  
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**Federal Board of Revenue**  
Versus  
**Mr. Sohail Abbas, Abbottabad.**

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS /  
RECOMMENDATIONS DATED 28.12.2018 PASSED BY THE FTO IN COMPLAINT NO. 1339/ISB/IT/2018**

Kindly refer to your representation dated 28.01.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 28.01.2019 has been filed by the FBR, against the findings of the FTO dated 28.12.2018, whereby it has been held that:

**"FBR to direct:-**

- i. **the Commissioner-IR BTB Abbottabad, to vacate the impugned order for Tax Year 2009 dated 28.06.2014 by invoking Section 122A of the Ordinance, as per law; and**
- ii. **report compliance within 45 days."**

2. The background of the case is that the complaint was filed under Section 10(1) of the Federal Tax Ordinance, 2000 (FTO Ordinance) against an ex-parte order dated 28.6.2014 framed under Section 122C of the Income Tax Ordinance, 2001 (the Ordinance) for Tax Year 2009.

3. The Complainant is a Chief Officer employed in Merchant Navy of United Arab Emirate (UAE). According to the Authorized Representative (AR), the Department (Deptt) without serving any notice on the Complainant finalized ex-parte provisional assessment for Tax Year 2009 vide impugned order dated 28.06.2014, under Section 122C of the Ordinance, creating tax demand of Rs.0.289 million; that Section 122C of the Ordinance was inserted through Amended Finance Ordinance (AFO) on 28.10.2009 which came into force through Finance Act (FA) 2010 w.e.f. 05.06.2010, therefore, the same was applicable from Tax Year 2010 onwards. Hence, allegedly impugned order dated 28.06.2014 for Tax Year 2009 passed under Section 122C of the Ordinance is void initio.

4. The complaint was sent by FTO for comments to the Secretary, Revenue Division, 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 thereto, the Chief Commissioner-IR, RTO Abbottabad filed parawise comments dated 27.11.2018. It was contended that on 23.02.2009 (during Tax Year 2009) the Complainant purchased an immovable property worth Rs.1.380 million. In compliance of notice issued under Section 114 of the Ordinance for Tax Year 2009, the Complainant filed details vide letter dated 06.09.2012. As the details were found deficient due to non availability of supporting evidence from the bank regarding encashment of foreign remittance amounting to Rs.1.380 million, the Complainant was served Show Cause Notice (SCN) through UMS on 18.12.2012, for compliance by 08.01.2013. Subsequently, SCN dated 20.06.2014 under Section 111 of the Ordinance, was also served through UMS. As compliance was not made, the impugned proceedings were completed under Section 122C of the Ordinance vide order dated 28.06.2014. The Complainant did not avail benefit of Section 122C (2) of the Ordinance, thus demand of Rs.0.289 million stood confirmed. The Complainant was thereafter served with notice dated 25.05.2015, under Section 138(1) of the Ordinance, for recovery of tax demand. On 09.06.2015, the Complainant attended and was asked to furnish evidence, of encashment of foreign remittance against which the above property was alleged to have been purchased. He, however, failed to provide the same. Subsequently, notice was issued under Section 140 of the Ordinance dated 15.08.2017, for recovery through attachment of the complainant's bank account. Thus the learned FTO has gave the aforementioned findings.

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5. Mr. Muhammad Bilal, Additional Commissioner-IR RTO Abbottabad has represented the FBR. On the other hand, Sardar Muhammad Iqbal, Advocate has appeared on behalf of the Complainant. Both sides have been afforded opportunity of hearing.

6. A thorough perusal of record and examination of all documents on record has been undertaken.

7. It is not out of place to be mentioned that Section 122A of Income Tax Ordinance 2001 provides as under:-

*"122A. Revision by the Commissioner.—(1) The Commissioner may [suomoto] call for the record of any proceeding under this Ordinance or under the repealed Ordinance in which an order has been passed by any [Officer of Inland Revenue] other than the Commissioner (Appeals).*

*(2) Subject to sub-section (3), where, after making such inquiry as is necessary, Commissioner considers that the order requires revision, the Commissioner may [suomoto] make such revision to the order as the Commissioner deems fit.*

*(3) An order under sub-section (2) shall not be prejudicial to the person to whom the order relates.*

*(4) The Commissioner shall not revise any order under sub-section (2) if—*

*(a) an appeal against the order lies to the Commissioner (Appeals) or to the Appellate Tribunal, the time within which such appeal may be made has not expired; or*

*(b) the order is pending in appeal before the Commissioner (Appeals) or has been made the subject of an appeal to the Appellate Tribunal."*

8. It is pointed out that the learned FTO has made recommendations which are only to the extent that the Commissioner-IR BTB Abbottabad, to vacate the impugned order for Tax Year 2009 dated 28.06.2014 by invoking Section 122A of the Ordinance (as mentioned supra), as per law within 45 days. It is an order wherein the Agency has been directed to decide the issue as per law. The Agency has full powers to decide the issue on merits and in accordance with the provisions of relevant law. The Agency has filed this representation without valid justification. In the circumstances, the representation is liable to be rejected.

9. Accordingly, Hon'ble President has been pleased to (a) reject the instant Representation of FBR and to (b) uphold the impugned findings/recommendations of learned FTO.

(Dr. Zulfiqar H. Awan)  
Director General (Legal)

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.05/FTO/2019 dated 19.08.2019

Copy for information to:

1. Mr. Sohail Abbas, R/o House No. 938/30, Lala Zar Colony, Mansehra Road, Supply Bazar, Abbottabad.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Commissioner Inland Revenue, BTB Zone, Regional Tax Office, Abbottabad.
- ✓ 4. The Chief (Legal), Federal Board of Revenue, Islamabad.
5. Sardar Muhammad Iqbal, Advocate High Court, Sardar Law Chamber, 1<sup>st</sup> floor, Awan Plaza, Mandian, Abbottabad.
6. Master file.

(Dr. Zulfiqar H. Awan)  
Director General (Legal)

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