

President's Secretariat (Public)
Aiwan-e-Sadr
ISLAMABAD

*Federal Board of Revenue
Versus
Mr. Nisar Ahmed, Gujrat*

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS /
RECOMMENDATIONS DATED 22.04.2019 PASSED BY THE FTO IN REVIEW PETITION IN
COMPLAINT NO. 1374/GWL/IT/2018**

Kindly refer to your representation dated 23.05.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 23.05.2019 has been filed by the FBR-Agency, against the revised findings of the FTO dated 22.04.2019, whereby it has been held that:

"The petitioner has failed to point out any legal infirmity in the impugned recommendation or any mistake or error floating on the face of the record. Accordingly, the Review Petition (RP) stands rejected. File be annexed with the complaint file."

Original findings of the learned FTO dated 19.12.2018 provide as under:

RECOMMENDATIONS:

The FBR to

- i. *direct the Commissioner-IR Gujrat Zone to cancel the provisional assessment dated 30.05.2015 framed under Section 122C by invoking provisions of Section 122A of the Ordinance; and*
- ii. *initiate necessary disciplinary proceedings against the Assessing Officer/IRO and the CIR who prepared and signed the comments dated 12.11.2018; and*
- iii. *Report compliance within 45 days.*

2. The background of the case is that the Complainant an individual engaged in Karyana business registered with the Department vide NTN 3640056-4 used to file returns of income regularly with effect from Tax Year 2010. He contended that despite this fact, the DCIR BTB Unit-6, Zone-II, Gujrat without making verification from the system, framed the provisional assessment for Tax Year 2010 under Section 122C (1) of the Ordinance vide order dated 30.05.2015 creating tax demand of Rs.1.010 million against the Complainant. The Complainant was allegedly neither served with any notice nor the impugned order was delivered to him and an amount of Rs. 0.358 million was withdrawn from his bank account.

3. After due consideration, the learned FTO has passed aforementioned recommendations.

4. The instant representation has been filed by the FBR. Mr. Muhammad Tahir Khan, Additional Commissioner-IR Gujrat has represented the FBR. On the other hand, the Complainant has not attended the hearing despite issuance of notice on 02.09.2019.

202

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23/05/19

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5. During the course of hearing, the Departmental Representative (DR) has stated that recommendation(i) of the learned FTO (order dated 19.12.2018) has already been implemented. He has presented a copy of the order of Commissioner IR dated 27.12.2018 under Section 122A of Income Tax Ordinance, 2001 indicating that *“on examination of assessment record revealed that the taxpayer is an existing taxpayer at NTNNo.3640056-4 and filed Income Tax Return for Tax Year 2010. Keeping in view these facts and directions of the Honorable, FTO, the provisional assessment passed u/s 122C of the Income Tax Ordinance, 2001 dated 30.05.2015 is hereby cancelled for tax year 2010.”*

6. Hence, recommendation(i) of learned FTO has been implemented.

7. As far as recommendation(ii) to initiate disciplinary proceedings against the Assessing Officer/IRO and the CIR who prepared and signed the comments dated 12.11.2018 is concerned, the perusal of the precedents shows that such recommendation of the FTO is in excess of his jurisdiction. In the circumstances, such recommendation(ii) of the learned FTO is liable to be set aside leaving it open for the departmental authority to proceed in the matter in accordance with law.

8. Accordingly, Hon'ble President has been pleased to dispose of the representation of FBR having become in-fructuous.

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

The Chairman,
Federal Board of Revenue,
Islamabad.

No.31/FTO/2019 dated 01.10.2019

Copy for information to:

1. Mr. Nisar Ahmed, S/o Ghulam Nabi, R/o Mohallah Arain, Kullah Chor, Tehsil & District: Gujrat.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. The Chief Commissioner-Inland Revenue, Gujrat Zone, Regional Tax Office, Sialkot.
5. Mr. Nadeem Akhtar Shahzad, ITP, Zafar & Associates-LLP, 1st Floor, Haider Plaza, Price Chowk, Gujrat.
6. Master file.

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

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203