

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

Federal Board of Revenue
Versus
Sh. Qaiser Mehmood, Sialkot

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 12.04.2019 PASSED BY THE FTO IN COMPLAINT NO. 1395/GWL/IT/2018

Kindly refer to your representation dated 14.05.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 14.05.2019 has been filed by the Federal Board of Revenue (FBR), against the order of the Federal Tax Ombudsman (FTO) dated 12.04.2019 (received by Agency on 16.4.2019), whereby it has been held that:

"The FBR to:

- 23/9/19
- i. direct the Zonal CIR concerned to rectify the order passed u/s 122A of the Ordinance, while exercising powers conferred u/s 221 of the Ordinance, as per law;*
 - ii. initiate disciplinary proceedings in terms of Section 14(6) of the FTO Ordinance, against the Zonal CIR for passing order under Section 122A of the Ordinance, which was contrary to law, procedure, established Department practices and exercise of powers for corrupt motives to extend huge illegal benefit to the Complainant and causing substantial loss of revenue to the state; and*
 - iii. 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 Ombudsman (FTO) Ordinance 2000 by Sheikh Qaiser Mehmood against the alleged maladministration of the Department while making amendment, for tax year 2013 under Section 122(1) of the Income Tax Ordinance, 2001 (the Ordinance). The Complainant a member of AOP, had filed return of total income declaring income @ Rs. 0.928 million. Statedly, bank account of the Complainant in the Allied Bank Ltd, (ABL), was concealed and Department by taking action under Section 122(1) of the Ordinance completed amendment of assessment proceedings on account of unexplained/concealed credit entries in bank account No. 001001113850049, Allied Bank Ltd, Nasir Road, Sialkot. Total unexplained credit entries amounted to Rs. 685.279 million for which the Complainant was issued show cause notice. The complainant stated that he had availed tax amnesty scheme for an amount of Rs. 42.834 million. After allowing the said amount, claimed in amnesty, amendment in assessment was made as under:-

<i>"Description</i>	<i>Tax Year</i>	<i>Total Amount Credited</i>
<i>ABL, Nasir Road, Sialkot (Total credit entries)</i>	<i>2013</i>	<i>685,279,406/-</i>
<i>Less declared under amnesty scheme</i>	<i>2013</i>	<i>42,833,970/-</i>
<i>Balance</i>		<i>642,445,436/-</i>
<i>Add: income declared as per return</i>		<i>928,382/-</i>
<i>Net income amended u/s- 122(1)</i>		<i>643,373,818/-</i>
<i>Tax @ 35%</i>		<i>225,180,836/-</i>
<i>Already paid</i>		<i>61,757/-</i>
<i>Balance payable</i>		<i>225,119,079/-</i>

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A show cause notice U/S- 182(2) of the Ordinance, for imposition of penalty on account of concealment of income/furnishing of inaccurate particulars of income was also issued. Total liability in the case worked out was as under:-

Tax levied	Rs.225,180,836/-
Penalty (to be imposed)	Rs.225,180,836/-
Total liability	Rs.450,361,672/-"

The Complainant alleged that the amendment in assessment, could not have been made because of availing tax amnesty scheme and it was prayed that impugned order of amended assessment may be declared contrary to law.

3. Before the FTO the stance of the FBR was that:-

"The matter pertained to determination of tax liability and was appealable, hence under the provisions of Section 9(2)(b) of the FTO Ordinance, jurisdiction of this forum is barred. On facts, it was stated that the Complainant availed Tax Amnesty Scheme (TAS) by declaring peak balance amounting to Rs. 34.216 million, whereas the amount of undisclosed deposits in the bank was confronted at Rs. 685.279 million. Total amount on which amnesty was claimed (including other assets) amounts to Rs. 42.834 million and whole of the amount was allowed and balance unexplained credit entries (Rs. 685.279 million – Rs. 42.834 Million)= Rs. 642.445 million was taxed. Since the addition was made after giving the credit of income shown by the Complainant through TAS, hence no maladministration was involved. Action of the Assessing Officer was justified as unexplained credit entries had been taxed after allowing the amount claimed in the TAS. It was, however, reported by the CIR that order passed by the DCIR had been set-aside by invoking provisions of Section 122A of the Ordinance and at present no adverse order is in the field, so it was prayed that the proceedings of complaint may be dropped."

4. After consideration of the matter, the learned FTO has issued the order dated 12.4.2019.

5. The instant representation has been made by the Agency. The hearing of the case has been held on 03.09.2019. Mr. Tahseen Sadiq Tarar, Additional CIR Sialkot has represented the FBR. On the other hand, the Complainant has not attended the hearing despite issuance of notice on 26.8.2019.

6. A thorough perusal of record and examination of all documents on record has been undertaken. During the course of hearing, the Departmental Representative (DR) has pointed out that recommendations of learned FTO have already been implemented by the Department. Essential details are as under:-

"Directions of FTO	Remarks of Department
i. <i>direct the Zonal CIR concerned to rectify the order passed u/s 122A of the Ordinance, while exercising powers conferred u/s 221 of the Ordinance, as per law;</i>	<i>Demand of Rs.225,119,079/- has been created on 19.6.2019 by the concerned DCIR by passing the order under Section 122(1) of Income Tax Ordinance 2001 in the said case. Hence, the implementation of this direction has been duly made and no loss of revenue is occurred.</i>
ii. <i>initiate disciplinary proceedings in terms of Section 14(6) of the FTO Ordinance, against the Zonal CIR for passing order under Section 122A of the Ordinance, which was contrary to law, procedure, established Department practices and exercise of powers for corrupt motives to extend huge illegal benefit to the Complainant and causing substantial loss of revenue to the state; and</i>	<i>The initiation of disciplinary proceedings against the departmental officials / officers by the FTO has been declared out of jurisdiction by the Honorable President of Pakistan vide below mentioned orders:-</i> 1. No.01/FTO/2015 dated 30.5.2017. 2. No.20/FTO/2017 dated 15.3.2017. 3. No.115/FTO/2016 dated 1.11.2016.
iii. <i>Report compliance within 45 days</i>	<i>Stands implemented."</i>

[At page 78 (of case file) alongwith copy of order of DCIR dated 19.6.2019]

7. It is not out of place to be mentioned that DCIR vide his order under Section 122(1) of the Income Tax Ordinance, 2001 dated 19.6.2019 has conveyed as follows:-

"The above mentioned picture is crystal clear that the taxpayer totally failed to explain the balance credit entries as confronted in the show cause notice u/s 111(1)(d) of the Income Tax Ordinance, 2001 amounting to Rs.642,445,436/- and relied only one point that the taxpayer has availed Amnesty 2018 on the said bank account the credit of which has already been given to the taxpayer. Therefore, assessment is amended u/s 122(1) of the Income Tax Ordinance, 2001 as under:-

Name of Bank	Tax Year	Total Amount Credited (Rs)
ABL, Nasir Road, Sialkot.	2013	685,279,406/-
Less declared amnesty scheme	2013	42,833,970/-
Balance difference for addition u/s 111(1)(d)		642,445,436/-
Add: income declared as per return.		928,382/-
Net income amended u/s 122(1)		643,373,818/-

Calculation of Tax:-

Total income amended	643,373,818/-
Tax @ 35%	225,180,836/-
Already paid	61,757/-
Balance payable	225,119,079/-

Amended/assessed as above. Issue demand notice and challan alongwith copy of this order. Also issue notice u/s 182(2) for imposition of penalty on account of concealment of income/furnishing of inaccurate particulars of income."

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

9. As far as recommendation(ii) to initiate disciplinary proceedings against the Zonal Commissioner IR 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.

10. Accordingly, Hon'ble President has been pleased to dispose of the representation of FBR having become infructuous.

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

The Chairman,
Federal Board of Revenue,
Islamabad.

No.30/FTO/2019 dated 18.09.2019

Copy for information to:

1. Sh. Qaiser Mehmood, C/o Qaiser Electronics, Ramatalai, Sialkot.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Chief (Legal), Federal Board of Revenue, Islamabad.
4. The Commissioner-IR, Sialkot Zone, Regional Tax Office, Sialkot.
5. Muhammad Akram Raza, Zafar & Associates, 299-Shah Faisal Road, Model Town, Sialkot.
6. Master file.

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