

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

Federal Board of Revenue
Versus
Mr. Tariq Masood, Bahawalnagar

REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 18.03.2019 PASSED BY THE FTO IN COMPLAINT NO. 1707/GWL/IT/2018

Kindly refer to your representation dated 17.04.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 17.04.2019 has been filed by the FBR/Agency, against the findings of the FTO dated 18.03.2019, whereby it has been held that:

"FBR to -

- i. Direct the Commissioner-IR Gujrat to re-revisit the impugned order dated 30.06.2018 in terms of Section 122A of the Ordinance, after providing opportunity of hearing, to the Complainant, as per law, and*
- ii. Report compliance within 45 days."*

2. The background of the case is that the Complainant is a non-resident working in United Arab Emirates (UAE) since the year, 1991. According to the Complainant, his family is settled in Horoonabad District Bahawalnagar. He has no Pakistan based income, except the foreign remittances, which are exempted from tax. He alleged that the department without considering this fact and on the basis of unauthenticated bank transactions issued notice dated 19.06.2018. No further opportunity was provided thereafter and the impugned order dated 30.06.2018 Tax Year 2013 under Section 121 (1) (d) of the Ordinance creating tax liability amounting to Rs. 0.985 million was passed. He contended that for Tax Year 2010 also the department framed assessment under Section 122C of the Ordinance, vide order dated 29.06.2015, creating demand of Rs. 0.015 which was, however, withdrawn as per clearance certificate issued vide letter dated 18.11.2015. He reiterated that the assessment for Tax Year 2013 is illegal as the same was framed without considering the above facts and providing him the opportunity of hearing.

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

"It was contended that proceedings for Tax Year 2013, were initiated on the basis of investment made in the purchase of property worth Rs. 4.768 million and assessment was framed under Section 121(1)(d) of the Ordinance, raising demand of Rs. 0.986 million. The statutory notices under Section 114(4) read with Section 116 (1) of the Ordinance, were issued and served but the Complainant failed to respond. Subsequently, the Complainant was served with SCN dated 19.06.2018, which remained un-complied. It was further contended that the impugned assessment framed, for Tax Year 2013 under Section 121(1) (d) of the Ordinance, was appeal before Commissioner-IR (Appeals), Sialkot, therefore, jurisdiction of this office is barred in terms of Section 9(2)(b) of the FTO Ordinance.

During hearing, the Departmental Representative (DR) appeared whereas no one appeared on behalf of the Complainant. The DR reiterated that as the impugned assessment for Tax Year 2013 had been framed after serving statutory notices against which the Complainant had remedy of appeal available, under Section 127 of the Ordinance."

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4. After thorough consideration of the matter, the learned FTO has issued the aforementioned findings. The instant representation has thus been made by the FBR.

5. The hearing of the case has been held on 27.08.2019. Mr. Muhammad Tahir Khan, ADCIR has represented the FBR. On the other hand, Mr. Tariq Masood and Mr. S.M. Rashid Shah AR have appeared. Both sides have been afforded the opportunity of hearing.

6. A thorough perusal of record and examination of all documents on record has been undertaken. It is evident that the learned FTO has made the recommendations directing the Commissioner-IR Gujrat to re-visit the impugned order dated 30.06.2018 in terms of Section 122A of the Ordinance, after providing opportunity of hearing, to the Complainant, as per law, within 45 days. Such a direction is based on the allegation of the complainant that he had not been afforded opportunity of hearing and explaining his position. The order is aimed at to satisfy the mandate of law and principles of natural justice. It is only the Agency to decide the matter as per law. The Agency has full powers to decide it on merits in accordance with the provisions of law. In the circumstances, the findings of the learned FTO are in accord with law and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected. Needless to state that the mention of Section 122A even if is ignored, the learned FTO otherwise could pass an order of the nature as contained in the order.

7. No justification has been made out to upset the findings of the learned FTO. Thus, the representation is liable to be rejected.

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

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

The Chairman,
Federal Board of Revenue,
Islamabad.

No.17/FTO/2019 dated 25/09.2019

Copy for information to:

1. Mr. Tariq Masood, S/o Master Muhammad Yousaf, R/o H. No. 250, Gulshan Iqbal Colony, Haroonabad, District: Bahawalnagar.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Commissioner IR, Gujrat Zone, Regional Tax Office, Sialkot.
4. The Chief (Legal-I), Federal Board of Revenue, Islamabad
5. Master file.

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

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