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IN THE ISLAMABAD HIGH COURT, ISLAMABAD

(W.P. No. 2332 /2021)

1. Abdul Waheed Khan
Commissioner Inland Revenue,
Audit Zone-I, LTO, Mauve Area G 9/1,
Islamabad.
2. Zulfiqar Ahmed
Commissioner Inland Revenue,
AEOI Zone, LTO, 4th Floor, Evacuee Trust Complex,
Agha Khan Road, Islamabad.
3. Naeem Hassan
Commissioner Inland Revenue,
Audit Zone-II, LTO, Mauve Area G 9/1,
Islamabad.
4. Shabana Mumtaz
Commissioner Inland Revenue,
Legal Zone, LTO, Mauve Area G 9/1,
Islamabad.

Chief (L-III)
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.....PETITIONERS

-: Versus:-

For Supreme Court Use

1. Federal Tax Ombudsman
Through its Registrar,
Federal Tax Ombudsman Secretariat, 5-A
Constitution Avenue,
Islamabad.

3 MAY 2021
Examiner
Supply Section
Islamabad High Court
Islamabad

2. Federal Board of Revenue
Through its Chairman,
F.B.R. House, Constitutional Avenue,
Islamabad.

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30/6/21
ASSISTANT REGISTRAR (JUDG)

...RESPONDANTS

complaints, the matter does not fall within the jurisdiction of respondent No.1. That the investigation of corruption falls within the domain of relevant Investigation Agencies and not that of the Federal Tax Ombudsman ("FTO"). He submitted that investigation of corruption resulting to tax evasion across an industry does not fall within the functions of the FTO as envisaged under Section 9 of the Ordinance. That even if investigation of tax evasion fell within the domain of the learned FTO a complaint making an allegation against an officer of the Federal Board of Revenue was still needed for exercise of *suo motu* powers under Section 9 read with Section 17 of the Ordinance. That the impugned letter had been issued in breach of Section 10 of the Ordinance, which mandates that the learned FTO is first required to issue a notice to the officer under question then seek a reply from such officer before proceeding to the investigation. That the impugned letter also offered from infirmity as it was issued without specifying the scope of inquiry and amounted to engaging in a fishing expedition barred by law. He relied on the following judgments

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Support his submissions: *The Barium Chemicals Ltd vs. The Company law board* (AIR 1697 SC 295), *Dr. Akhtar Hassan Khan vs. FOP* (2012 SCMR 455), *Syed Nusrat Nasir vs. FOP* (2013 PTD 486), *National Feeds Ltd vs. Competition Commission of Pakistan* (2016 CLD 1688), *PESCO vs. Wafaqi Mohtasib* (PLD 2016 SC 940), *Z & J Hygienic Products (Pvt.) Ltd vs. FOP* (2018 PTD 419), *Wafaqi Mohtasib vs. SNGPL* (PLD 2020 SC 586), *S.M Ali Zaman Gardezi vs. FOP* (2021 PTD 1788), *Jubilee Life*

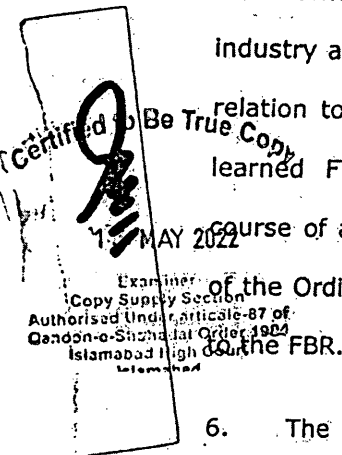
constitution of an Inspection team while seeking a nomination from FBR. He contended that the Impugned letter suffered from no infirmity and was opposed by the petitioners to cover-up corruption in relation to tax assessment within the tobacco industry.

4. The counsel for respondent No.2 (FBR) supported the petition. He submitted that the impugned letter did not specify the scope of the investigation that had been ordered by the learned FTO and suffered from jurisdictional defects.

5. In rebuttal, it was contended that the petitioners were aggrieved persons because it was tax assessment that fell within their jurisdiction that the learned FTO ought to scrutinize without first notifying them of any allegations as required under Section 10 of the Ordinance. He further submitted that the learned FTO had no jurisdiction to undertake an across industry audit in the manner in which the tax was assessed in relation to tobacco industry. That even in the event that the learned FTO sought to investigate corruption, the correct

course of action was to undertake a study under Section 9(4) of the Ordinance and then make appropriate recommendations to the FBR.

6. The contents of the impugned letter reveals that the learned FTO sought to investigate corruption in relation to discharge of duties by Commissioners assessing income of cigarette and tobacco industry. The learned FTO ordered an inspection and sought from the FBR the nomination of an official to be included in the three member inspection team.



echelons within the executive to curb maladministration and resolve the complaints of individuals. The mandate of the learned FTO is not that of a corruption watchdog or of an auditor diving into the tax assessment practices across industries or that of an agency responsible for maximizing tax revenue. The scope of the authority and jurisdiction of the learned FTO is focused on addressing the grievances of individuals who are caught on the wrong side of exercise of authority and discretion by public functionaries administering tax laws and to address the grievances of such victims of maladministration. The definition of maladministration supports such interpretation of the scope or authority of the learned FTO, which is defined in Section 2(3) as follows:

(3) "maladministration" includes,-

(i) a decision, process recommendation, act of omission or commission which-

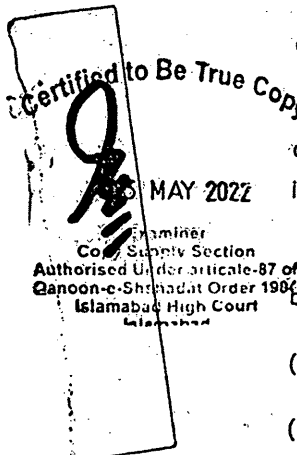
(a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons;

(b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;

(c) is based on irrelevant grounds; or

(d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as bribery, jobbery, favouritism, nepotism, and administrative excesses;

(ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude; in the administration or discharge of duties and responsibilities;



practices in discharge of duties and responsibilities by tax officials. What the learned FTO did not take into account was that it is "neglect, inattention, delay, incompetence, inefficiency and inaptitude, in the administration or discharge of duties and responsibilities," that constitutes maladministration for purposes of Sections 2(3)(ii) of the Ordinance. The word corruption or dishonesty in discharge of duties and responsibilities is evidently missing from definition of maladministration. The reason is simple. Under relevant laws, the curtailment of corruption falls within the domain of other specialized agencies. The legislature in its wisdom did not endow the learned FTO with such responsibility as discharge of such functions requires certain expertise and an organizational setup. The learned FTO was not conceived to perform such function. The learned FTO can logically scuttle corrupt practices

within the tax administration while investigating individual complaints by identifying the processes and practices and ethos

that create rent-seeking opportunities for tax officials. When

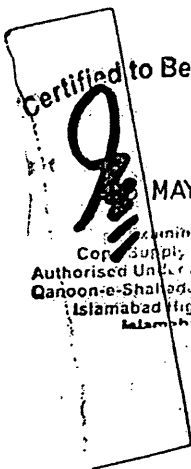
exposed to corrupt practices in discharge of his functions, the

learned FTO need not ignore them. Section 9(4) thus provides

the following:-

(4) For carrying out the objectives of this Ordinance and, in particular for ascertaining the causes of corrupt practices and injustice, the Federal Tax Ombudsman may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

10. The language of this provision very clearly provides that the role of the learned FTO is prescriptive: to ascertain the

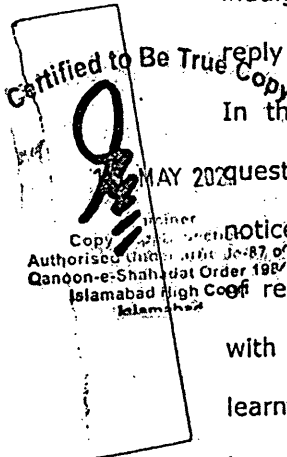


there must exist a concrete allegation of maladministration whether or not there is a complainant. Under Section 10(4) such allegation is to be put to the person within the tax administration against whom it is leveled.

12. Section 9(1) read together with Section 10 highlights that there must exist an explicit allegation of maladministration. Such allegation must not form part of any anonymous or pseudonymous complaint. Such allegation must be against a public official within the tax administration who is alleged to have engaged in maladministration. And where the learned FTO proposes to conduct an investigation in relation to such allegation he is required to issue a notice to the Secretary of the Revenue Division and the official who is alleged to have indulged in maladministration, requiring such official to file a reply to the allegations to be investigated by the learned FTO.

In the event that such notice is issued and the official in question fails to respond to such allegation contained in the notice issued by the learned FTO within a period of thirty days receipt of such notice, the learned FTO can then proceed with the investigation after recording reasons as to why the learned FTO deems necessary to proceed with such investigation.

13. Thus even in relation to an investigation initiated by the learned FTO of his own motion, the two necessary conditions for initiation of investigation are that (i) there must be an allegation of maladministration against the tax official, and (ii) such tax official must be issued a notice identifying the



cannot be generated without first hearing the taxpayer. The tax statutes then provide statutory remedies of appeal and identify forums that can be approached by a taxpayer or the tax department whoever is aggrieved by exercise of adjudicatory functions by the Commissioner, Commissioner (Appeals) or the Appellate Tribunal. That is why Section 9(2)(b) excludes the jurisdiction of the learned FTO when it comes to assessment of tax liability, as for such purpose appropriate statutory remedies have been provided by law. This scheme is guided by the principle of *audi alteram partem* and the right of a taxpayer to due process. In the instant case, for example, the learned FTO has sought to initiate an investigation into tax evasion on part of taxpayers involved in the business of tobacco and the insinuation is that tax commissioners across the country are complicit in facilitating such tax evasion. To determine whether or not the income and tax liability of taxpayers involved in the business of tobacco has been under-assessed, would require the learned FTO to sit in judgment over the assessment undertaken by Commissioners. This is barred by Section 9(2)(b) of the Ordinance. The enterprise would require the learned FTO to pass judgment on the tax liability of taxpayers who are not complainants before the learned FTO and whose tax affairs are not to be judged by the FTO. And any recommendation in relation to tax affairs of such taxpayers without granting them an opportunity to be heard would obviously fall foul of the guarantee to fair trial in determination of civil liabilities under Article 10-A of the Constitution.

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to be necessary. Section 10(11) vests authority in the learned FTO to regulate the procedure for exercise of his powers under the Ordinance. However, the procedure adopted must be in pursuit of the object of the investigation in question and means employed must be reasonable in view of the end to be achieved by the learned FTO. Section 10(9) provides that the learned FTO may require any tax official to produce any document which in the opinion of the learned FTO is relevant for the conduct of any investigation. In the event that the learned FTO seeks such document and it is not provided by the tax official he can resort to his powers under Section 14 of the Ordinance to compel the production of such document. Even if exercise of such power does not bear fruit, the learned FTO can then resort to his power to order entry and search of any premises in which the required documents may be found. For such purpose he can constitute an inspection team under Section 17 of the Ordinance. What the scheme of the Ordinance does not envisage is putting the cart before the horse and starting by appointing an inspection team to enter and search a premises for procurement of the documents without resort to the powers under Section 10(9) or Section 14, especially when the documents are in possession of a public official exercising jurisdiction under relevant legislation as defined in Section 2(6) of the Ordinance.

17. In the instant case, the learned FTO after concluding that an investigation into suspected corruption of tax officials was to be initiated by *suo moto*, did so without issuing any

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down by the august Supreme Court in Dr. Akhtar Hassan Khan vs. FOP (2012 SCMR 455) and reiterated by this Court in National Feeds Ltd vs. Competition Commission of Pakistan (2016 CLD 1688).

19. For the aforementioned reasons, this Court concludes that the subject-matter of the investigation purportedly being initiated by the learned FTO falls beyond the jurisdiction vested in his office under Section 9 of the Ordinance. The procedure adopted by the learned FTO falls foul of the requirement of Section 10. And the constitution of an inspection team as a first step in the investigation without first exercising authority to summon the required record amounts to procedural impropriety in breach of the principles of reasonability and proportionality. Further, the impugned letter is also in breach of Section 24-A of the General Clauses Act, 1897, as it records no reasons as to the scope or manner or propose of exercise of authority by the learned FTO.

For the above reasons, this petition is **allowed** and the impugned letter is set aside for being devoid of jurisdiction and in breach of the provisions of the Ordinance.

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**(BABAR SATTAR)
JUDGE**

Shakeel Afzal/-