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PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Federal Board of Revenue
Vs
Syed Haider Asad

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS
DATED 09.02.2021 PASSED BY THE FTO IN COMPLAINT NO. 3104/ISB/ST/2020**

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

This representation has been filed by the Federal Board of Revenue (FBR) on 04.03.2021 against the order of the learned Federal Tax Ombudsman (FTO) dated 09.02.2021, whereby it has been held that:

"FBR to direct-

- (i) *the Commissioner-IR, East Zone, RTO, Islamabad to implement order of the ATIR dated 03.10.2019, subject to the decision of the Hon'ble Islamabad High Court, Islamabad in lieu of surety bond, to the satisfaction of the Commissioner-IR, concerned; and*
- (ii) *report compliance within 45 days."*

2. The above-mentioned online complaint was received against the Commissioner-IR, RTO, Islamabad in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for failing to implement the decision of Appellate Tribunal Inland Revenue (ATIR) in Sales Tax Appeal No.47/IB/2017 dated 03.10.2019.

3. Syed Haider Asad (the complainant) was engaged in taxable supplies to the Government Departments and his case for tax period July, 2008 to December, 2012 was selected for investigative audit which it revealed that 1/5th tax was withheld at source while the remaining 4/5th amount was not deposited by him. So contravention proceedings were initiated by issuing Show Cause Notice (SCN) and Order-in-Original (OIO) was passed adjudging Rs.10.318 million to be payable along with default surcharge and penalty. Further, against the OIO, he filed appeal before the Commissioner-IR, (Appeals) which was rejected and then he approached the ATIR against the said Order-in-Appeal (OIA). The ATIR vide STA No.98/IB/2001 dated 27.10.2014, vacated the OIO and OIA and remanded the case back to the adjudication officer for a fresh adjudication. The Deptt initiated proceedings in compliance of the ATIR's order dated 27.10.2014 and passed order establishing that he had committed tax fraud and Rs.10.318 million were recovered. Moreover, default surcharge and penalty were also ordered to be recovered. He filed appeal before the Commissioner-IR, (Appeals) who remanded the case back to the adjudication officer, against which the complainant filed appeal before the ATIR. The ATIR vide order dated 03.10.2019 annulled the impugned order passed by the adjudication officer being not maintainable in the eyes of law and accordingly vacated order of the Commissioner-IR, (Appeals). Consequently, the Deptt was required to implement the ATIR's order dated 03.10.2019 and refund the recovered amount of Rs.16.318 million but no action had been taken. He therefore took up the matter with the learned Federal Tax Ombudsman by filing complaint under Section 10(1) of the FTO Ordinance 2000.

4. The learned Federal Tax Ombudsman called the comments from the Secretary, Revenue Division, Islamabad. In response thereto, the FBR vide letter dated 05.01.2021 forwarded para-wise comments of the Commissioner-IR, East Zone, RTO, Islamabad. It was averred that the Deptt had filed Reference Application bearing STR NO.22/2020 dated 18.02.2020 under Section 47 of the Sales Tax Act, 1990 before the Hon'ble Islamabad High Court, Islamabad, therefore, bar of jurisdiction in terms of Section 9(2)(a) of the FTO Ordinance was applicable. Further, legal proceedings were initiated by the Directorate General Intelligence & Investigation-IR (Dte Gen I&I-IR), Islamabad and sales tax of Rs.6.00 million was recovered from his Bank Account. Moreover, demand of Rs.16.318 million was created vide Order-in-Original No.45 dated 30.12.2013 while an amount of Rs.10.318 million was recovered against the said demand. The Complainant filed second appeal against the Order-in-Original before the ATIR, which was allowed and order of the Commissioner-IR (Appeals) was vacated vide judgment dated 03.10.2019. The Deptt had preferred Sales Tax Reference Application before the Hon'ble Islamabad High Court, Islamabad which is pending, hence, it was contended that refund was not admissible.

5. The learned Federal Tax Ombudsman on consideration of the matter passed the above referred order. Hence, the instant representation of the FBR.

6. The hearing of the case was fixed for 12.10.2021. Representative of FBR has not appeared despite notice, whereas, Syed Haider Asad complainant himself has appeared.

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7. The learned Federal Tax Ombudsman dealt with the matter vide Paras 6 to 8 of the order, i.e.:-

"6. The complainant has filed this complaint against failure of the Deptt to implement the decision of ATIR dated 03.10.2019. Operative part of the decision reads as under:-

"11. Having considering all aspects of the case in its entirety and after specifically following the ratio settled in the case reported as 2012 PTD (Trib) 350 and STA No. 478/LB/2012. We have reached the inescapable conclusion that the department has failed to prove the charge of tax fraud against the registered person. Furthermore, the learned CIR(Appeals) also has erred in law in remanding the case to the adjudicating officer for fresh proceedings.

12. In view of the above submission made by the learned AR, we are inclined to hold that the impugned order passed by the adjudicating officer is not maintainable in the eye of law which is hereby annulled. Order of the learned CIR(Appeals) being against the express provisions of law, is accordingly vacated.

13. The miscellaneous application for additional ground is allowed and appeal filed by the registered person succeeds."

7. The Deptt has filed STRA before the Hon'ble Islamabad High Court, Islamabad against decision of ATIR dated 03.10.2019. However, there is no stay/restraining order which means that order of the ATIR holds the field and is liable to be implemented by the Deptt. In this regard, the Hon'ble President of Pakistan vide order No.77/FTO/2019 has given guidelines by holding that:-

"It has been noted that order of the Appellate Tribunal Inland Revenue (ATIR) dated 09.12.2016, is now subject matter of reference pending before the Hon'ble High Court Sindh but there is no stay/restraining order by the learned High Court. Since the order of the Appellate Tribunal is in the field, it is liable to be implemented. However, in order to be just and fair and to secure interest of the department, the order of the Appellate Tribunal which is intact will be implemented within a fortnight subject to final outcome of the matter pending before the Hon'ble High Court Sindh. In case the order of the Appellate Tribunal is set-aside by the Hon'ble High Court, the department will be entitled to make recovery forthwith.

8. Failure of the Deptt to implement order of ATIR dated 03.10.2019 is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance. "

Thus, he concluded that failure to implement the decision of the ATIR amounts to maladministration.

8. Be that as it may, the recommendations of the learned Federal Tax Ombudsman are only to the extent directing "the Commissioner-IR, East Zone, RTO, Islamabad to implement order of the ATIR dated 03.10.2019, subject to the decision of the Hon'ble Islamabad High Court, Islamabad in lieu of surety bond, to the satisfaction of the Commissioner-IR, concerned; within 45 days". This is consistent with so many orders passed in such like matters in the representations. There is thus no valid justification to assail the order of the learned Federal Tax Ombudsman. In such circumstances, this representation is liable to be rejected.

9. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the instant representation of the FBR.

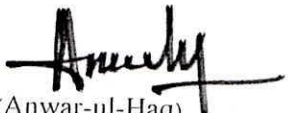
(Anwar-ul-Haq)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.18/FTO/2021 dated 26.10.2021

Copy for information to:

1. Syed Haider Asad, House No.276, Ibn-e-Sina Road,G-11/3, Islamabad (0322-5511885)
2. The Registrar, Federal Tax Ombudsman, Islamabad.
3. The Chief (Legal-III), Federal Board of Revenue, Islamabad.
4. Master file.


(Anwar-ul-Haq)
Director General (Legal)