

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

Rep. Nos.361 to 390/FTO/2022

Date of Decision:25.01.2023

Federal Board of Revenue Vs Tilawat Shah & others

Subject: **30 REPRESENTATIONS FILED BY FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS / RECOMMENDATIONS DATED 26.10.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NOS. 3667, 3669, 3672, 4115, 4128, 4130, 4131, 4132, 4133, 4215, 4216, 4217, 4218, 4219, 4255, 4256, 4257, 4258, 4259, 4288, 4289, 4290, 4291, 4292, 4387, 4389, 4390, 4391, 4392 & 4393/PWR/IT/2022.**

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

1. **Rep. No.361/FTO/2022 in C. No. 3667/PWR/IT/2022**
2. **Rep. No.362/FTO/2022 in C. No. 3669/PWR/IT/2022**
3. **Rep. No.363/FTO/2022 in C. No. 3672/PWR/IT/2022**
4. **Rep. No.364/FTO/2022 in C. No. 4115/PWR/IT/2022**
5. **Rep. No.365/FTO/2022 in C. No. 4128/PWR/IT/2022**
6. **Rep. No.366/FTO/2022 in C. No. 4130/PWR/IT/2022**
7. **Rep. No.367/FTO/2022 in C. No. 4131/PWR/IT/2022**
8. **Rep. No.368/FTO/2022 in C. No. 4132/PWR/IT/2022**
9. **Rep. No.369/FTO/2022 in C. No. 4133/PWR/IT/2022**
10. **Rep. No.370/FTO/2022 in C. No. 4215/PWR/IT/2022**
11. **Rep. No.371/FTO/2022 in C. No. 4216/PWR/IT/2022**
12. **Rep. No.372/FTO/2022 in C. No. 4217/PWR/IT/2022**
13. **Rep. No.373/FTO/2022 in C. No. 4218/PWR/IT/2022**
14. **Rep. No.374/FTO/2022 in C. No. 4219/PWR/IT/2022**
15. **Rep. No.375/FTO/2022 in C. No. 4255/PWR/IT/2022**
16. **Rep. No.376/FTO/2022 in C. No. 4256/PWR/IT/2022**
17. **Rep. No.377/FTO/2022 in C. No. 4257/PWR/IT/2022**
18. **Rep. No.378/FTO/2022 in C. No. 4258/PWR/IT/2022**
19. **Rep. No.379/FTO/2022 in C. No. 4259/PWR/IT/2022**
20. **Rep. No.380/FTO/2022 in C. No. 4288/PWR/IT/2022**
21. **Rep. No.381/FTO/2022 in C. No. 4289/PWR/IT/2022**
22. **Rep. No.382/FTO/2022 in C. No. 4290/PWR/IT/2022**
23. **Rep. No.383/FTO/2022 in C. No. 4291/PWR/IT/2022**
24. **Rep. No.384/FTO/2022 in C. No. 4292/PWR/IT/2022**
25. **Rep. No.385/FTO/2022 in C. No. 4387/PWR/IT/2022**
26. **Rep. No.386/FTO/2022 in C. No. 4389/PWR/IT/2022**
27. **Rep. No.387/FTO/2022 in C. No. 4390/PWR/IT/2022**
28. **Rep. No.388/FTO/2022 in C. No. 4391/PWR/IT/2022**
29. **Rep. No.389/FTO/2022 in C. No. 4392/PWR/IT/2022**
30. **Rep. No.390/FTO/2022 in C. No. 4393/PWR/IT/2022**

30 representations have been filed by Federal Board of Revenue (FBR) on 30.11.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 26.10.2022, whereby it has been held that:

“FBR to-

1. ***direct the Chief Commissioner RTO Peshawar to ensure that Principals, Vice-Principals and Head Masters, of Elementary & Secondary Education, Khyber Pakhtunkhwa are treated at par with Principals FG institutions in matters relating to tax withholding u/s 149 of Income Tax Ordinance, 2001; and***
 2. ***report compliance within 45 days.”***
2. The above mentioned complaints were filed under Section 10 (1) of the Federal Tax Ombudsman/Ordinance, 2000 (FTO) asking the FBR to allow them tax rebate as admissible to full time teachers or researchers, under clause (2) Part-III of Second Schedule to Income Tax Ordinance, 2001. The representations, being identical nature, were decided through a single identical order.
 3. The complaints submitted that they were working as Principals, Vice Principals and Headmasters of the Govt Higher Secondary Schools and Govt High Schools in the KPK Province. Reportedly, before posting as Principals/Vice Principals and Headmasters, as teachers they were enjoying tax rebate while declaring salary income, however, after their posting against the above posts, they had been deprived of the admissible rebate. They prayed the FBR to allow them rebate in salary as they were still categorized in Teaching Cadre by the Provincial Government despite being posted as Principal, Vice Principals and Headmasters but their requests were not acceded to. They therefore, took up the matter with the learned FTO by filing complaints U/S 10(1) of the FTO Ordinance, 2000.
 4. The learned FTO called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the Chief Commissioner IR, RTO Peshawar vide letter No.338 dated 31.08.2022 submitted the following reply as follows:-

"The complainant is currently serving in GHS (Karnal Sher Killi) Swabi as Principal (BS-18) and has approached the forum of Hon'ble Federal Tax , Ombudsman for allowing him Tax Rebate on his salary, which is meant for only a full time teacher or a researcher as defined in clause (2) Part-III of Second Schedule to Income Tax Ordinance, 2001. Further, through the Finance Act, 2013 a proviso has been added to clause (2) of Part-III of 2nd Schedule to the Income Tax Ordinance, 2001, which clearly envisages that full time teacher means a person employed purely for teaching and not performing any administrative or managerial jobs i.e: Principals, Headmasters, Directors, Vice Chancellors, Chairmen, Controllers etc. Similarly a full time researcher means a person purely employed for research job only in a research institution and such institution is purely performing research activities."
 5. Considering the respective stances, the learned FTO proceeded to pass the above referred order in the complaints of identical nature which is assailed by the FBR.
 6. The hearing of the case was fixed for 17.01.2023. Mr. Usman Asif, Deputy Commissioner has represented the FBR, whereas, Mr. Tilwat Shah, Principal, Mr. Fida Muhammad, Principal, Mr. Dil Nawaz Khan, Principal and Mr. Abdur Rahim, Principal have appeared.

7. The learned FTO thrashed the matter vide paras 7&8 (iii) of the order as follows:-

“7. During hearing, the complainants pointed out that discriminatory treatment is meted out in respect of deduction of income tax. One of complainant, Mr. Tilawat Shah, Principal GHS, Karnal Sher Killi Swabi explained comparative position of Federal Government (FG) ’s High School's Principal and Provincial Govt: High School's Principal, in terms of deduction of withholding tax:

<i>Description</i>	<i>Federal Employee (Rs)</i>	<i>KP Govt Employee (Rs)</i>	<i>Difference</i>
<i>Gross Salary</i>	<i>223,463</i>	<i>216,612</i>	<i>Rs.6,851 more to Federal Employee.</i>
<i>Tax deduction per month</i>	<i>14,343</i>	<i>1,7073</i>	<i>Rs.2,730 more for KP employee.</i>
<i>Tax deduction per year per salary Slip provided</i>	<i>172,216</i>	<i>204,876</i>	<i>Rs.32,660 more for KP employee.</i>

The complainant being Principal of High School, KP, is drawing less salary and paying more income tax which shows that Principal of FG School enjoys rebate in salary and complainants are denied this concession which is unjustified and highly discriminatory.

8 (iii). The Complainant has compelling evidence of discriminatory treatment vis-a-vis less deduction of income tax from Principals of F.G College. This apparently discriminatory treatment of FBR and RTO, Peshawar tantamount to maladministration, defined under Section 2 (3) (1) (b) of FTO, Ordinance 2000.”

Thus, he concluded that discriminatory treatment meted out to the Principals of the KPK Province amounts to maladministration.

8. The recommendation of the learned FTO (i) directing the “FBR to direct the Chief Commissioner RTO Peshawar to ensure that Principals, Vice-Principals and Head Masters of Elementary & Secondary Education, Khyber Pakhtunkhwa are treated at par with Principals FG institutions in matters relating to tax withholding u/s 149 of Income Tax Ordinance, 2001” is unassailable in the circumstances of the case. It may be observed that the complainants have produced credible evidence to prove that although the Principals of F.G. Educational Institutions draw more salary than KPK Principals but pay less income tax. This discriminatory treatment meted out to the KPK Principals, Vice Principals and Headmasters viz-a-viz their counterparts of the FGE Institutions needs to be rectified. In such circumstances, the FBR may be directed to look into the matter and treat the complainants at par with their counterparts of the FGE Institutions regarding deduction of Income Tax payable U/S 149 of the Income Tax Ordinance 2001. The FBR may submit a compliance report in this regard to the FTO Secretariat within 45 days of the receipt of this order. Thus, the representations are liable to be disposed of accordingly.

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

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

The Chairman,
Federal Board of Revenue,
Islamabad.

Mr. Tilawat Shah & others
Principal,
Government High School Karnal Sher Killi,
Swabi.

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), FBR, Islamabad.
3. The Commissioner-Inland Revenue, Withholding Zone, Regional Tax Office, Peshawar.
4. Master file.

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