

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

Federal Tax Ombudsman Suo Moto Action

Subject: REPRESENTATIONS PREFERRED BY FEDERAL BOARD OF REVENUE ON SUO MOTO NOTICE THROUGH OWN MOTION BY THE LEARNED FEDERAL TAX OMBUDSMAN DATED 31.01.2022 PASSED BY THE FTO IN COMPLAINT NO. 0192/OM/2021

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

2. This representation has been filed by Federal Board of Revenue (FBR) on 02.03.2022 against the Order of the learned Federal Tax Ombudsman (FTO) dated 31.01.2022, whereby it has been held that:

“FBR to direct Members IR-Operations, IT and Policy;

- (i) to review the issue of de-novo notices, especially in cases where direct relief has been provided by Commissioners Appeals. IT applications must comply with the legal provisions;***
- (ii) examine other findings as given above and review the appeal management system accordingly; and***
- (iii) report compliance within 90 days.”***

3. This Own Motion (OM) Investigation was initiated in exercise of powers conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against the neglect, inattention, incompetency, inefficiency and ineptitude in discharge of duties and responsibilities by the PBR functionaries regarding giving appeal effect to the orders passed by various appellate fora in respect of the provisions of Section 124 (1), (2) and (4) of the Income Tax Ordinance 2001 (Ordinance). Whereas, the Section 124 of the Ordinance provides as follows:-

“Section 124 of the Ordinance stipulates certain timelines for giving appeal effect to the orders of various appellate authorities. In cases covered under Section 124(1) of the Ordinance, appeal effect is to be given within two years from the end of the financial year in which the order of the CIR (Appeals), the Appellate Tribunal, the High Court or the Supreme Court, as the case may be, was served on the Zonal Commissioner. As per Section 124 (2) where cases are set aside by various appellate authorities, appeal effect is to be given within one year by the end of the financial year in which the Commissioner-IR or Commissioner-IR (Appeals), as the

case may be, was served with the order. Whereas, Section 124 (4) provided that where direct relief is provided in an order, the Commissioner shall issue appeal effect order within two months of the date, the order is served to the Commissioner.”

While investigating various individual complaints, it was observed that the said timelines were not being adhered to by the field officers and in this connection disciplinary proceedings had also been initiated in some cases against Commissioners-IR on the recommendations of the FTO’s Secretariat. Against the back drop of neglect, inattention and delay in passing order U/S 124 of the Ordinance, cognizance was taken U/S 9(1) of the FTO Ordinance. The Chief Commissioner-IR, Karachi was directed to furnish detailed information regarding appeal effects given to the appellate orders pertaining to his jurisdiction.

4. The learned Federal Tax Ombudsman called information from the Secretary, Revenue Division regarding receipt of taxpayers’ applications for providing appeal effects for the period from 1st July, 2016 to 15th November, 2021. In response thereto, the FBR forwarded information provided by the Chief the Commissioner-IR, Karachi submitting detailed lists of cases for the said period, in respect of all the three Audit Zones. Separate lists were provided for the cases where appeal effects had been given and were pending. Perusal of the lists showed that in all 391 appeal orders were received. Out of the same, appeal effects were given in 244 cases. Whereas appeal effects were pending in 147 cases. Further, the Department averred that appeal effects were being given within time limitation as per law.

5. Considering the respective stance, the learned Federal Tax Ombudsman proceeded to pass the above referred order. Thus, the representation by the FBR.

6. The hearing of the case was fixed for 21.06.2022. Mr. Nayyer Mehmood, Chief (BDT-IT) and Mr. Zulfiqar Ali Gopang, SS(BDT-IT) have represented the FBR.

7. The learned Federal Tax Ombudsman thrashed the matter vide Para 3 of the order as follows:-

- “i. Notices for de-novo proceedings were issued in all the cases, irrespective of the fact whether the order is to be made under sub Section (2) or (4) of the Section 124.*
- ii. Pendency ranged from a few days to even over 500 days in some cases.*
- iii. Certain improvements are needed in the LT system to safeguard, both the interest of revenue as well as the taxpayers, i.e.;*
 - a. Where direct relief is provided in appeal order, notice for de-novo proceedings is un-called for and against the legal provisions. For instance where orders are annulled / quashed by CIRs (Appeals) in those*

*cases what is the rationale of issuing a notice to the taxpayer? As the assessing officer cannot overrule the appellate authority therefore re-fixation of cases certainly causes delay and inconvenience to the taxpayers. **The D.R contended that the system does not allow to pass order without giving notice. This a serious systemic anomaly.***

- b. Taxpayer's ledger of demand & refund is being maintained by the system, In case of delay in giving appeal effect in time, there is chance of miscalculation in outstanding liability or refund, which may result in adverse outcome for the taxpayer. The I.T system may be updated to prevent any action on the ledger outstanding demand/refund, once an appeal order is uploaded in the system, unless its appeal effect has been given.*
- c. Discussion with the DR suggests that delay in appeal effect is mostly caused due to excess workload. Standard templates may be provided in the system where officer only have to enter the issue and amount of relief in the given columns & system would calculate the resultant relief/demand.”*

8. At the outset the FBR HQ’s representative has informed that the FBR has been implementing Appeal effect process in IRIS since 2014. Accordingly, he has submitted the report vide letter No.1(0192)SS(BDT)/2022/145239-R dated 24th June, 2022 as follows:-

“It has been confirmed from the technical team of PRAL that the IT applications comply with the relevant legal provisions and there is no requirement of the system to issue de novo notices in cases where direct relief has been provided by Commissioner Appeals. In such cases, the appeal effect order can be passed directly, without issuance of any notice to the taxpayer. Since 2014 almost 8,500 orders U/S 124/129 have been completed through the system.

As the said recommendation seems to be based on some erroneous information, it may please be held as infructuous.

9. It may be noted that the IT programmes (Iris System) are adhered to the relevant legal provisions and there is no requirement of the System to issue de novo notices where direct relief has been granted by the Commissioner-IR (Appeals). Accordingly, appeal effect order can be passed directly without issuance of notice to the Taxpayer and 8500 orders pertaining to appeal effect cases are reported to have been finalized /processed through the Iris System. Thus, the representation is liable to be disposed of with the direction to the FBR for submitting a holistic report to the FTO’s Secretariat within 90 days

positively. However, regarding other recommendation of the learned Federal Tax Ombudsman, suffice it to observe that it is merely a reiteration about the duty of the Departmental Authorities for effective monitoring of the System so that it should function optimally. There is thus no justification to interfere with the order of the learned FTO. In such circumstances, the representation is liable to be disposed of accordingly.

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

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

The Chairman,
Federal Board of Revenue,
Islamabad.

No.50/FTO/2022 dated 13.07.2022

Copy for information to:

- (1) The Registrar, Federal Tax Ombudsman, Islamabad.
- (2) The Chief (Legal-III), Federal Board of Revenue, Islamabad.
- (3) The Chief (BDT-IT), Federal Board of Revenue, Islamabad.
- (4) Master file.

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

