

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

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**No.62/FTO/2022**

**28.12.2022**

*Federal Board of Revenue Vs Mr. Abdul Ghaffar*

Subject: **REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS / RECOMMENDATIONS DATED 15.02.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 2454/LHR/IT/2021**

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

This representation has been filed by Federal Board of Revenue on 16.03.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 15.02.2022, whereby it has been held that:

***“FBR is directed to:-***

- (i) ***ask CCIR CTO Lahore to identify the officers who had passed the legally erroneous orders dated 20.01.2017, and 30<sup>th</sup> December, 2020 U/S 161/205 of the Ordinance for Tax Year 2015. Both need to be reprimanded; and***
- (ii) ***report compliance within 45 days.”***

2. The above mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against duplicate proceedings initiated U/S 161/205 of the Income Tax Ordinance, 2001 (the Ordinance) for Tax Year 2015, vide order dated 04.11.2021 passed U/S 122A of the Ordinance.

3. Mr. Abdul Ghaffar, M/s Rado Dyeing and Printing Mills (Pvt) Ltd (the complainant) alleged that the Deptt earlier passed order dated 20.01.2017 under Section 161/205 of the Ordinance for Tax Year 2015 creating Tax Demand amounting to Rs.0.065 million against him. In response, he deposited an amount of Rs.0.065 million into the Govt. Exchequer vide CPR dated 18.07.2017. Thereafter, Deptt passed another order U/S 161/205 of the Ordinance for Tax Year 2015 on 30.12.2020 creating Tax Demand amounting to Rs.12.722 million against him. Being aggrieved, he filed appeal before the CIR (Appeals) who vide order dated 03.05.2021 directed the Zonal CIR to examine the record and verify contention of the taxpayer regarding two assessments U/S 161 for the same Tax Year 2015 from available record and the FBR Portal and decide the matter of double assessment in the light of revisionary powers U/S 122A of the Ordinance through a judicious and speaking order covering all legal and factual aspects of the case. In compliance of the CIR (Appeals) order, the Zonal CIR passed order U/S 122A of the Ordinance on 04.11.2021 wherein the previous order passed U/S 161/205 of the Ordinance dated 20.01.2017 was vacated stating that proceedings were conducted manually and the same was sheer violation of instructions of the Board and latest order passed U/S 161/205 of the Ordinance dated 30.12.2020 was remanded back for de-novo proceedings.

4. The learned Federal Tax Ombudsman called the comments of the Secretary, Revenue Division, Islamabad. In response thereto, the Deptt filed comments vide letter dated 14.12.2021 raising preliminary objection regarding jurisdiction of the learned FTO. On merits, it was averred that order dated 20.01.2017 passed U/S 161/205 for Tax Year 2015 was not available on IRIS which was operational since 2014. Order

U/S 161/205 of the Ordinance and Demand Notice U/S 137(2) of the Ordinance dated 20.01.2017 for Tax Year 2015 were not available on ITMS which indicated that said proceedings were conducted manually and the same was sheer violation of FBR instructions, hence, carried no legal weight. Moreover, the Deptt had already passed order U/S 122A of the Ordinance for de-novo proceedings U/S 161/205 of the Ordinance for Tax Year 2015 so the taxpayer was required to join proceedings alongwith record so that the same be finalized as per relevant provisions of law.

5. Considering the respective stance, the learned Federal Tax Ombudsman proceeded to pass the above mentioned order, which is assailed by the FBR.

6. The hearing of the case was fixed for 13.12.2022. Mr. Talat Mahmood, Additional Commissioner-IR, Lahore has represented the FBR, whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

7. Suffice it to observe that the preliminary objection invoking Section 9(2) of the Ordinance was dealt with by the Federal Tax Ombudsman as follows:-

*“The preliminary objection regarding bar of jurisdiction raised under Section 9(2) of the FTO Ordinance is misconceived as the matter does not relate to assessment of income order determination of tax liability but initiation of duplicate proceedings under Section 161/205 of the Ordinance for Tax Year 2015. The preliminary objection raised by the Deptt is thus, overruled.”*

8. The learned Federal Tax Ombudsman thrashed the matter as follows:

*“9. It is admitted that Deptt has already passed order dated 04.11.2021 U/S 122A of the Ordinance wherein order dated 20.01.2017 passed U/S 161/205 of the Ordinance for Tax Year 2015 has been vacated and order dated 30.12.2020 has been remanded back for de-novo proceedings. So, the taxpayer is required to join proceedings after 6/7 years of the filing of his return for TY 2015. The record shared during the proceedings presents a pathetic state of professionalism, at least in the instant case:*

- i. There are two orders U/S 161/205 for TY 2015, 1<sup>st</sup> dated 20<sup>th</sup> January, 2017 and the other one dated 30<sup>th</sup> December, 2020.*
- ii. Second order has been passed without consulting the previous record.*
- iii. Report of the concerned CIR (Audit-III, CTO LHR) dated 18<sup>th</sup> October, 2021 terms both orders as untenable: he vacated the 1<sup>st</sup> "being not sustainable in the eyes of law", and discards the 2<sup>nd</sup> one as passed "without scrutiny of relevant documents and providing adequate opportunity of hearing to the tax payer."*
- iv. Fresh proceedings have been initiated by the CIR for TY 2015.*

*The grievance of the two orders U/S 161/205 thus stands proved and CIR's aforementioned comments confirm maladministration by both officers in terms of section 2(3) of FTO Ordinance, 2000.”*

9. At the outset, the Departmental Representative has stated that the learned FTO's recommendations have already been implemented and the taxpayer has also deposited tax amounting to Rs.224,760/- as per fresh assessment. He has also submitted a report as follows:-

*“It submitted with due reverence that in connection with the hearing of representation filed against the order/recommendations of the Hon'ble FTO in complaint mentioned in the subject, the following submissions are made herein under:-*

- i. *That, the instructions / recommendations made by the Hon'ble FTO have been fully complied with as, in the light of its recommendations, the assessment order passed by the OIR dated 30.12.2021 had been annulled by the Commissioner concerned with the direction to conduct de-novo proceedings and vacated the manually filed order dated 20.01.2017.*
- ii. *That as a result of the said order issued by the Commissioner, the fresh assessment has been finalized and a demand of Rs. 224,760/- was created and the taxpayer had already deposited the tax.*
- iii. *That, the taxpayer has withdrawn his complaint vide letter dated March 08, 2022 and submitted that his grievance has been resolved.*

*In view of the above, it is submitted that the representation of the department may kindly be accepted and findings of the Hon'ble FTO be set-aside."*

10. Suffice it to observe that the Deptt has already implemented the learned FTO's order and issued afresh demand of Rs.224,760/- which has already been deposited by the taxpayer. Further, on amicable settlement of the matter, the complainant also requested the FTO Secretariat vide letter dated March 8 2022 for withdrawal of his complaint. In such circumstances, the representation has become infructuous. Regarding request for expunging the recommendation (i) of the order, suffice it to observe that the action has been left to be taken by the Deptt itself. Needless to mention that in case any departmental action is proposed against any official, he/she will be afforded due opportunity of showing cause and defence which will satisfy the requirement of due process of natural justice.

11. Accordingly, the Hon'ble President, as per his decision above, has been pleased to dispose of the representation as infructuous.

-Sd-  
(Muhammad Saleem)  
Director (Legal)

The Chairman,  
Federal Board of Revenue,  
**Islamabad.**

Mr. Abdul Ghaffar,  
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Plot No. 80, Quaid-e-Azam Industrial Estate,  
Kot Lakhpat, **Lahore. 0300-8461717**

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), Federal Board of Revenue, **Islamabad.**
3. The Commissioner-IR, Corporate Tax Office (CTO), Lahore.
4. Master file

-Sd-  
(Muhammad Saleem)  
Director (Legal)

