

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

Dated: 28.12.2022

No.70/FTO/2022
No.70-A/FTO/2022
No.70-B/FTO/2022
No.70-C/FTO/2022
No.70-D/FTO/2022
No.70-E/FTO/2022

Federal Board of Revenue VS *M/s Din Textile Mills Ltd*

Subject: **REPRESENTATIONS FILED BY FEDERAL BOARD OF REVENUE AGAINST THE FINDINGS / RECOMMENDATIONS DATED 21.02.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 0040 TO 0045/KHI/IT/2022.**

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

- (1) No.70/FTO/2022 Complaint No.0040/KHI/IT/2022
- (2) No.70-A/FTO/2022 Complaint No.0041/KHI/IT/2022
- (3) No.70-B/FTO/2022 Complaint No.0042/KHI/IT/2022
- (4) No.70-C/FTO/2022 Complaint No.0043/KHI/IT/2022
- (5) No.70-D/FTO/2022 Complaint No.0044/KHI/IT/2022
- (6) No.70-E/FTO/2022 Complaint No.0045/KHI/IT/2022

These six Representations have been filed by Federal Board of Revenue on 25.03.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 21.02.2022, whereby it has been held that:

“FBR to:-

- (i) *direct Commissioner-IR, LTO, Karachi to complete the dispose of the claim of outstanding refunds;*
- (ii) *Members-IR (Operations) and IT, FBR to develop the system for inter tax adjustment in terms of STGO dated 24.04.2007; and*
- (iii) *report compliance within 60 days.”*

2. The above mentioned six (06) complaints were filed against the Commissioner-1R, Enforcement-II, LTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance; 2000 (FTO Ordinance). As facts of all cases were identical thus, the complaints were disposed of through a single consolidated order.

3. M/s Din Textile Mills Ltd (the complainant) a Company registered as manufacturer of Textile e-filed returns of income for the years 2013 to 2018, claiming refund of Tax paid in excess of Tax Liability. The position of year-wise refund applied, received and still pending was tabulated below:

Year	Refund claim (Rs)	Refund issued (Rs)	Balance / outstanding (Rs)
2013	58,427,361	34,672,476	23,754,885
2014	91,272,041	49,339,851	41,932,190
2015	66,708,860	49,863,037	16,845,823

2016	41,756,692	35,524,464	6,232,774
2017	53,890,454	44,282,114	9,062,340
2018	80,052,128	48,928,612	31,123,516

4. The complaints were filed for non-sanctioning of pending balance claims in spite of several applications. The complainant also applied for adjustment of Income Tax Refund against the Sales Tax Demand in terms with Sales Tax General Order C.No. 3(6)ST-L&P/2002 dated 24th April, 2007. However, the Chief Commissioner declined the request on the plea that there was no systemic arrangement to inter adjust Income Tax Refund with Sales Tax. He therefore took up the matter with the learned Federal Tax Ombudsman by filing complaint under Section 10(1) of the FTO Ordinance 2000.

5. The learned Federal Tax Ombudsman called the comments of the Secretary Revenue Division, Islamabad. In response thereto, the Chief Commissioner-IR, LTO, Karachi submitted reply of the CIR Enforcement-II, Karachi vide letter dated 21.01.2022. It was averred that verified refunds had already been issued to the complainant. However, the balance amount required physical record of the taxpayer and subsequent third-party verification. A fresh letter U/S 176 of the Income Tax Ordinance, 2001 had already been issued to the complainant for providing the requisite details and refund claims would be processed as soon as the details were provided.

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

7. The hearing of the case was fixed for 13.12.2022. Mr. Ehsan Ullah Khan, Secretary and Mr. S. Shabi Haider, Second Secretary, FBR HQs, Islamabad have 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.

8. The learned FTO thrashed the matter vide para 5 of the order as follows:-

“5. During hearing, the counsel of the Complainant agreed to provide the documents for verification and showed his satisfaction and agreement with the departmental representative. Regarding adjustment of income tax refund against sales tax liability, response was sought from Member-IR (Operations) FBR. Reply was received vide Second Secretary (ST-L&P) letter dated 2nd February 2022. Through the letter under reference, FBR asked the concerned officer to submit taxpayers proposal for inter adjustment to Board in terms of Sales Tax General Order, dated 24.04.2007. Copy of this letter was also sent to Member (IT) FBR with the request to develop an automated system of inter tax adjustment as provided under the said STGO.

- (i) *Partial verified refund of the Complainant has already been issued and the balance is also being processed after intervention of FTO.*
- (ii) *Unexplainable delay in development of system for inter tax adjustment for implementation of Sales Tax General Order No.3(6)ST-L&P/2002 dated 24.04.2007 tantamounts to maladministration in terms of Section 2(3)000)8(ii) of the FTO Ordinance.”*

9. At the outset, the Departmental Representative (DR) has informed that verified refunds have already been issued to the complainant, whereas, the balances are also being processed after the intervention of the learned FTO. This fact has also been acknowledged vide para-8 of the order dated 21.02.2022. However, regarding recommendations (ii), it has been informed that in pursuance of the learned FTO's directions, the FBR HQs has already initiated process vide letter No.1(13)ST-LP&E/FTO/2021/15874-R dated 2nd February, 2022, inter alia, stating that:-

“to the extent of inter-adjustment of income tax refund against sales tax liabilities, the Board has already devised procedure in terms of General Order vide letter No. 3(6)ST-L&P/2002 dated 24.04.2007. As per the procedure laid down in the aforesaid General Order the taxpayer has to submit an application for inter-tax adjustment to the officer concerned citing relevant particulars of the refund claimed and the tax payable by him.

It is, therefore, requested that the case of complainant may be examined in the light of above General Order and report alongwith express recommendations may be furnished to the Board within a week.”

10. In such circumstances, when there is already an Order on the subject, there can be no objection in improving the same, in a reasonable time. The FBR has already started process for developing a comprehensive and fully integrated inter-tax adjustment system in terms of the General Order dated 24-04-2007. Thus, it would be appropriate to dispose of the representations with the directions to the FBR for submitting a quarterly report to the FTO’s Secretariat intimating the progress made in developing the said software/system until it is finally launched as per law. Thus, the representations are liable to be disposed of accordingly.

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

-Sd-
(Muhammad Saleem)
Director (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

M/s. Din Textile Mills Ltd.,
35-A/1, Lalazar Area,
Moulvi Tamizuddin Khan Road, **Karachi.**

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), Federal Board of Revenue, **Islamabad.**
3. The Chief (System) Federal Board of Revenue, **Islamabad.**
4. Mr. Muhammad Furqan – ACA, M/s Tola Associates, 408, Continental Trade Centre, Block-8, Clifton, Karachi.02135303294-6
5. Master file

-Sd-
(Muhammad Saleem)
Director (Legal)