

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

**Rep.No.75/FTO/2022
Date of Decision:29.12.2022**

Federal Board of Revenue Vs Muhammad Nawaz

Subject: **REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 28.02.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 0285/GWL/IT/2022**

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

This representation has been filed by Federal Board of Revenue on 28.03.2022 against the order of the learned Federal Tax Ombudsman (FTO) dated 28.02.2022, whereby it has been held that:

“FBR to-

- (i) direct the Commissioner-IR, Gujrat Zone, RTO Sialkot to dispose of complainant's refund application for Tax Year 2021, as per law, after giving proper hearing; 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 non-issuance of refund amounting to Rs.2.714 million for Tax Year 2021 and cancellation of audit proceedings initiated under Section 177(1) of the Income Tax Ordinance, 2001 (the Ordinance).

3. Mr. Muhammad Nawaz (the complainant) obtained the leasehold rights by auction from various Government Departments for Tax Year 2021 and paid Advance Tax amounting to Rs.3.400 million under Section 236(A) of the Ordinance. He filed return of income / statement of final taxation, claiming refund amounting to RS.2.714 million for Tax Year 2021. He also e-filed refund application for Tax Year 2021 on 28.10.2021 followed by a reminder dated 31.12.2021. However, despite his repeated efforts, the Deptt was reluctant to pass order under Section 170(4) of the Ordinance within stipulated time but initiated audit proceedings under Section 177(1) of the Ordinance. 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 of the Secretary, Revenue Division, Islamabad. In response thereto, the Commissioner-IR, Gujrat Zone, RTO, Sialkot submitted parawise comments dated 08.02.2022. At the outset, preliminary objection of bar of jurisdiction under Section 9(2)(b) of the FTO Ordinance was raised on the ground that the matter was appealable before the CIR (Appeals) in terms of Section 170(5)(b) of the Ordinance and the matter also relate to assessment related proceedings and the remedy of appeal was available. Further, averred that the deduction of Tax @ 10% was correct because it related to purchase of property whereas 5% Tax was to be withheld on purchase of immovable property on auction. Whereas, his case was selected for audit under Section 177(1) of the Ordinance on 19.01.2022 prior to the filing of the complaint and reasons for selection were communicated to him. No maladministration was involved as the case had been selected for audit under Section 177(1) of the Ordinance.

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

6. The hearing of the case was fixed for 20.12.2022. Mr. Luqman Nasir, Deputy Commissioner-IR, RTO, Sialkot 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)(b) was dealt with by the learned FTO as follows:-

“ Objection of the Deptt regarding bar on jurisdiction of FTO under Section 9(2)(b) of the FTO Ordinance is misconceived because the matter does not come under the provision of Section 170(5)(b) of the Ordinance but in fact refund already stood determined as a result of deemed assessment under Section 120(1) of the Ordinance. The only

issue involved is the neglect, inattention and deliberate withholding / non-payment of refunds already determined, which is cognizable under the provision of Section 2(3)(ii)(v) of the FTO Ordinance. Hence the objection is overruled. ”

It was correct approach to the matter in the context of the instant controversy.

8. The learned Federal Tax Ombudsman thrashed the matter vide Paras 6-7 of the order as follows:

“6. Admittedly, the complainant e-filed refund application for Tax Year 2021 on 28.10.2021, followed by reminder dated 31.12.2021. The Deptt was required to have disposed of the refund application within 60 days of its filing, in terms of Section 170(4) of the Ordinance. However, till filing of the instant complaint, the Deptt failed to even respond to the Complainant's correspondence. Thus, delay in disposing of refund application for Tax Year 2021, within stipulated time under Section 170(4) of the Ordinance is evident. Though the selection of the case for audit under Section 177(1) of the Ordinance was also subsequent to the application for refund and the continuous efforts by the Complainant for its early disposal, yet probing the rationale of selection for audit is not within the ambit of this forum. However refund claim cannot be tagged with pendency of audit.

7. Inordinate delay in disposal of refund application, for Tax Year 2021 which is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance.”

Thus, he concluded that inordinate delay in disposal of refund application within stipulated period amounts to maladministration.

9. Be that as it may, the recommendations of the learned Federal Tax Ombudsman to the FBR to direct “*the Commissioner-IR, Gujrat Zone, RTO Sialkot to dispose of complainant's refund application for Tax Year 2021, as per law, after giving proper hearing; and report compliance within 45 days*” are unassailable. Suffice it to observe that it is merely a reiteration about the duty of the departmental authority to decide the matter as per law. The Agency has the lawful authority to decide the matter on its merits in accordance with the law. There is thus no valid justification to assail the order of the learned FTO. In such circumstances, this representation is liable to be rejected.

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

-Sd-
(Muhammad Saleem)
Director (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

Mr. Muhammad Nawaz S/o Ahmed Khan,
Gakhri, P.o Lala Musa, Tehsil Kharian,
District **Gujrat. 0332-6859257**

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, Regional Tax Office, Sialkot.
- (4) Master file.

-Sd-
(Muhammad Saleem)
Director (Legal)