

TAXATION NEWS

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Notices to taxpayers under FTR: audit issue to be discussed with FBR chief, Dar assures KCCI

November 16, 2014

Federal Minister for Finance Senator Ishaq Dar has assured a delegation of the Karachi Chamber of Commerce and Industry (KCCI) that the issue of audit notices to taxpayers under Final Tax Regime (FTR) will be thoroughly discussed with the Chairman Federal Board of Revenue (FBR) with a view to provide relief to taxpayers.

The assurance was given by Federal Finance Minister to KCCI delegation during a meeting in Islamabad. The delegation comprised Vice Chairman Businessmen Group and former president KCCI, Zubair Motiwala, President KCCI, Iftikhar Ahmed Vohra, Chairman KCCI Special Committee for Implementing MoUs, Junaid Esmail Makda, former president KCCI, A Q Khalil, Chairman Site Association of Industry, Javed Bilwani.

KCCI delegates while highlighting the grievances being faced by the existing taxpayers due to complex tax procedures, said that decision of FBR to issue audit notices to existing taxpayers under FTR has triggered deep concern amongst the honest taxpayers, who fear that these audit notices will only promote corruption and they will mainly be used as a tool to further harass the loyal taxpayers of Karachi as it contribute substantially to the national exchequer.

They said that instead of overburdening the existing taxpayers and creating more problems for them by issuing notices, the government must devise new strategy to bring tax evaders into the net which would surely help in achieving the tax collection target for the current fiscal year.

KCCI delegates further asked the government to consider Karachi Chamber's demand to constitute a Charter of Economy which must be signed by all political parties of the country in order to support the ailing economy. They said there is dire need to constitute a charter of economic growth or roadmap in consultation with the business community which must be endorsed by all political parties and implemented with the approval from National

Assembly.-PR

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FBR chief asked to probe case of "unlawful" promotions

November 17, 2014

SOHAIL SARFRAZ

In a landmark case of gross mismanagement and violation of procedure/rules, Federal Tax Ombudsman (FTO) has ordered Chairman FBR to hold thorough investigation through a committee of senior officers with a representative of Establishment Division and identify the officials responsible for concealment, abetment of forgery and violation of rules.

Sources told *Business Recorder* that the original complaint in the instant case was filed alleging that FBR had violated legal procedure and rules by unlawfully promoting three officers who had been subordinate to the complainant. The FTO has accepted the review application filed by the complainant and FTO has made recommendations to the FBR in this case.

In a recently decided case FTO Abdur Rauf Chaudhry ordered FBR to take appropriate corrective and disciplinary action for violation of legal procedure/rules by the responsible officers and ensure that no such malpractices are allowed to happen in future and to hold thorough investigation through a committee of senior officers with a representative of Establishment Division.

The FTO in his order observed that the relevant record with copies of Performance Evaluation Reports (PERs) and documents/letters as well as the issues as discussed and submitted by both the parties indicated that the complainant has raised some very important issues which require proper investigation and consideration. Prima facie, it is a case of gross mismanagement, irregularities and violation of procedure/rules which tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance 2000.

The FTO order stated, "Complaint was filed alleging that FBR had violated legal procedure and rules by unlawfully promoting three officers who had been subordinate to the

complainant. The applicant had proved with documentary evidence that tax officials were guilty of gross misconduct by violating lawful procedure, but the FBR did not take notice of this misconduct and thus violated rules and procedure, while promoting the officers which was tantamount to maladministration on the part of the FBR. He cited judgements of Lahore High Court and Sindh High Court wherein it has been held that FTO can investigate any allegation of maladministration on the part of the Revenue Division or any of its tax employees.

The applicant/complainant is no longer in service. His grievance is against perpetration of forgeries and concealment of correct facts from the promotion committees as well as from the superior courts. It also countenanced violation of rules and procedures prescribed by law and followed in practice. In this way gross maladministration was committed by the FBR and its employees, the order said.

The FTO order further said "complainant forcefully contended that the complaint was filed by him against favouritism on the part of the FBR in that it violated legal procedure, while promoting three officers without getting PERs signed or countersigned by him as required under the guidelines issued by the Establishment Division. The then DCIT, worked under him but submitted forged PERs by signing/countersigning the reports himself. This fact was confirmed by FBR in written comments submitted before this office, admitting that PERs were fake/forged. It was also admitted by the FBR that PERs of the officer were declared null and void on the ground that these PERs were "fake having been initiated and countersigned by officers other than Reporting Officer and Countersigning Officer." Even this was not the correct position. The PERs were not signed/countersigned by any other officer. In fact the signatures on these PERs were forged.

The FBR never brought actual facts of forgery of documents by the then DCIT before the courts or any of the promotion committees and, in this way, abetted in the use of forged documents prepared by him. No action was taken against him for forgery of PERs. The issue of forged PERs was not the subject matter of the writ petition before the court as forgery was detected by the Fact Finding Committee after the decision of the court. Complainant vehemently argued that disciplinary action and criminal proceedings against the then DCIT

under the provisions of Pakistan Penal Code for committing forgery were still pending and no action has, so far, been taken by the FBR despite its own Fact Finding Enquiry Report and his case was processed for promotion despite having evidence of forgery of three PERs.

Applicant/complainant's grievance is against perpetration of forgeries and concealment of correct facts from the promotion committees as well as from the superior courts. In this way gross maladministration was committed by the FBR and its employees, the FTO order stated. The act of forged PERs was not disclosed to the court. The Fact Finding Enquiry Committee submitted report later on 25-09-2006, which confirmed that the officer had forged Qurban Ali's signatures repeatedly. The issue of forgery on the part of the officer was, therefore, not and could not be subject matter of the above stated writ petition. However, no enquiry was conducted nor any action was taken by the FBR. The relevant record with copies of PERs and documents/letters as well as the issues as discussed and submitted by both the parties indicated that the complainant has raised some very important issues which require proper investigation and consideration. Prima facie, it is a case of gross mismanagement, irregularities and violation of procedure/rules which is tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance 2000, FTO order added.

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AGP for placing SROs before Parliament for approval

November 16, 2014

SOHAIL SARFRAZ

Auditor General of Pakistan (AGP) has emphasised that the Federal Board of Revenue (FBR) must place statutory regulatory orders (SROs) pertaining to exemptions/concessions, issued during Financial Years before the Parliament for approval to avoid loss of public revenue in case SROs are in conflict with Federal Acts/fiscal laws.

According to the latest AGP report issued in 2013-14 on audit objections against the FBR, AGP has recommended that issuance of SROs conflicting with the provisions of the Act should be reviewed; SROs pertaining to exemptions/ concessions, issued during Financial Years should be placed before parliament for approval and fixing responsibility for issuance

of SROs in conflict with substantive laws.

AGP said the section 2(46) of the Sales Tax Act, 1990 provides that value of supply means the consideration in money terms all federal and provincial duties and taxes, if any, which the supplier receives from the recipient for that supply, excluding the amount of sales tax and in case of imported goods, the value determined under section 25 of the Customs Act including the amount of customs duties and federal excise duty levied thereon. Further, section 148(9) of the Income Tax Ordinance, 2001 provides that value of goods means the value as determined under Customs Act, 1969, as if the goods were subject to ad-valorem increase in customs duty, federal excise duty and sales tax, if any, payable on the import of the goods. Contrary to the above, Part 2 (iii) under the heading Conditions and restrictions of SRO 655(1)/2007 dated 29.06.2007 issued under section 16(2) of the Federal Excise Act, 2005 states that the amount of special excise duty (SED) shall not be part of value for the purpose of assessment of custom duty, federal excise duty, sales tax or advance income tax in case of imported or locally manufactured goods.

Audit is of the view that the SRO issued under section 16(2) of the Federal Excise Act, 2005 cannot change the value of supply as defined under Sales Tax Act, 1990 and Income Tax Ordinance, 2001. When the value of supply / goods is determined by an Act of Parliament then any change in it would require an Act of Parliament in this regard, it said.

Exclusion of amount of SED from value of supply/goods for assessment of sales tax and income tax through SRO conflicting with the definition of value as explained in Sales Tax Act, 1990 and Income Tax Ordinance, 2001 caused loss to public exchequer to the tune of Rs 13,239.35 million during 2007-08 to 2011-12.

The lapse was pointed out to FBR in October, 2013. However, no reply was received. In the DAC meeting held in January, 2014, the issue of exclusion of SED from value of supply as defined under Sales Tax Act, 1990 and Income Tax Ordinance, 2001 was discussed in detail. The DAC directed the FBR to refer the matter to the Law & Justice Division for opinion as pointed out by the Audit and report compliance to Audit by January 31, 2014. Further progress was awaited till finalisation of the report, AGP added.

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FBR undecided to take action against defaulting retailers

November 16, 2014

MUHAMMAD ALI

Federal Board of Revenue (FBR) remains vacillated to take punitive measures against the retailers, who did not respond to the registration notices; it was learnt here on Saturday. According to sources, although FBR was striving to go all out for bringing retail sector into tax net, tax authority had so far received unfriendly response from the retail sector.

They said Karachi tax offices, on the directives of chairman FBR, had served notices to the retailers, offering them to get their businesses registered with tax department and if not, punitive measures would be taken against them. However, tax offices had so far received inimical response from retail sector; they said and added that international and domestic retail chains, which were supposed to be taxpayers, were also demurring to get their businesses enrolled with tax department.

"Instead of taking harsh measure against the retail sector, the FBR is now showing alacrity to collect only sales tax from retail sector on electricity consumption," sources said and hoped that it would generate substantial revenue for the department. Moreover, they exhorted FBR to use other utilities for revenue generation purpose besides introducing special incentives the retailers, who will voluntarily apply for tax registration.

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Collection of duty/taxes: NBP urged to make designated branches operational

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Khurram Ijaz General Secretary of Karachi Customs Agents Association (KCAA) on Saturday highlighted long outstanding issue regarding non-operational of five NBP branches authorised for collection of Customs Duty and Taxes through WeBOC System.

In this connection he pointed out that after the authorisation of these five branches no collection of duty / tax was made due to non-availability of User ID, password and proper training of NBP staff, therefore as recommend by the Karachi Customs Agents Association, training session has been arranged by the Directorate of Reform & Automation (WeBOC Project) on 26th & 27th November 2014 at Custom House Karachi.

In this regard, KCAA is requested to the President of National Bank of Pakistan to depute proper / skilled staff to get such training and after completion of training process posting of these trained staff must be continued in these designated branches of NBP ie Main Branch, Model Branch Clifton, Karachi Stock Exchange, Awami Markaz and Korangi Industrial Area Branch for collection of Customs duties and taxes.

Khurram Ijaz further informed that as per instructions of the Chief Collector-South and Collector of Customs expansion work has already been started at NBP Custom House. He emphasised that the expansion of Customs House Branch is not sufficient to meet the day to day increase volume of customs duties and taxes to be deposited in a one branch. Khurram Ijaz requested the NBP Authorities to make operational the designated branches of NBP for collection of duty / taxes without any hindrance and to facilitate the trade as well as to generate the revenue to the exchequer, he added--PR

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Income Tax Returns: Form can't be filled manually sans experts' help, observes FBR

November 16, 2014

The Federal Board of Revenue (FBR) has observed it is not expected that taxpayers would be able to fill manual income tax returns for Tax Year 2014 without help from experts and burden of accuracy of calculation of income and tax will be on the taxpayer himself.

Sources told *Business Recorder* here on Saturday that this has been stated by FBR Member Information Technology (IT) Raana Ahmed in her comments to the Federal Tax Ombudsman (FTO) in response to a representation filed by a taxpayer/citizen Waheed Shahzad Butt against wrong tax computation of tax liability in the Income Tax Return form devised by the

FBR for the Tax Year 2014.

The FBR added that the Return Forms available for manual filing are supposed to be filled in by the taxpayer himself and burden of accuracy of calculation of income and tax is on the taxpayer himself. FBR comments on the case C. No 1395/2014 (Tax Return 2014 - Computational Flaws) obtained from FBR revealed that the FBR Member IT has submitted para-wise comments in the case before the FTO office during last hearing.

According to the FBR comments, FBR Member IT said the return available for e-filing on "Iris" is accurate and strictly according to law. The return downloadable from FBR website is for manual filing and is supposed to be downloaded, printed and filled manually. The electronic return provided in Iris has been specifically designed to be user-friendly so that taxpayers with no technical background can easily fill it. As for the manual return, it is not expected that taxpayers would be able to fill it without the help from experts, it said. The FBR further said that the complainant had completely misunderstood the facts. The return available on web for e-filing through "Iris" is absolutely accurate and any issues faced by the taxpayer is apparently due to a lack of understanding on how to fill the return, The return provided for e-filing through "Iris" has been specifically designed to be user-friendly so that taxpayers with no technical background can easily fill it.

The return downloadable from FBR website is for manual filing and is supposed to be downloaded, printed and filled manually by the taxpayer at his own responsibility. While a taxpayer is forced to follow FBR's tax calculation for e-filing, there is no such compulsion for manual filing.

Member (IT), FBR and Secretaries (IT), FBR respond to hundreds of queries resulting from lack of understanding on the part of taxpayers and tax practitioners everyday on phone, email as well as in person to taxpayers who visit FBR field offices. The complainant could have directed these queries to one of the above officers instead of approaching the Honourable Federal Tax Ombudsman.

The FBR said the complainant's assumption that FBR functionaries "play with precious

resources of National Exchequer" as well as "ultimate wastage of public money in futile litigation" is baseless and without any factual basis. "The FBR works strictly in accordance with the laws and rules. Lack of knowledge of these laws and rules on the part of the complainant cannot be made the basis of such irresponsible comments," it said. The complainant's use of words such as "white elephant" is not only uncalled for but also shows a highly irresponsible attitude and lack of due respect for government functionaries, FBR said. Income Tax Return for Tax Year 2014 clearly shows "Payments for Services u/s 153(1)(b)" under "Minimum Tax Chargeable" at serial nos. 4 & 5 in Annexure E of Manual Return. Also, the same is available on the electronic return in the tab "Minimum Tax". The FBR further said that entering the said figures in the return available on "Iris" gives absolutely accurate and correct results.

The return available for e-filing on "Iris" is accurate and strictly according to law. The return downloadable from FBR website is for manual filing and is supposed to be downloaded, printed and filled manually. The electronic return provided in Iris has been specifically designed to be user-friendly so that taxpayers with no technical background can easily fill it. As for the manual return, it is not expected that taxpayers would be able to fill it without any help from experts.

In view of the above facts, it is prayed that the complaint may be rejected and the complainant be directed to approach the concerned officers in cases of such confusion before wasting the precious time of the Federal Tax Ombudsman, FBR Member Information Technology (IT) Raana Ahmed added.

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