

President's Secretariat (Public)
Aiwan-e-Sadr
ISLAMABAD

*Federal Board of Revenue
Versus
Mr. Muhammad Ali, Gujranwala*

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE FINDINGS /
RECOMMENDATIONS DATED 16.07.2019 PASSED BY THE FTO IN REVIEW PETITION IN COMPLAINT
NO. 1239/GWL/IT/2019**

Kindly refer to your representation dated 16.08.2019 on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 16.08.2019 has been filed by the FBR against the order-in- review of the learned FTO dated 16.07.2019, whereby it has been held that:

"FBR to:

- (i) *Direct the Commissioner-IR, Zone-II Gujranwala to consider while finalizing the audit proceeding for tax year 2016, declaration of assets dated 31.07.2018 filed by the Complainant and available on FBR's e-portal, as per law;*
- (ii) *consider the foreign remittances over and above declared under VOA Act, 2018 in accordance with clarification issued by State Bank of Pakistan (Rs. 25.474 million) as per law; and*
- (iii) *Report compliance within 45 days."*

The original order of the learned FTO dated 13.11.2018 provides as under:

"FBR to:

- (i) *Direct the Commissioner-IR, Zone-II Gujranwala to consider while finalizing the audit proceeding for Year 2016, declaration of assets dated 31.07.2018 filed by the Complainant and available on FBR's e-portal, as per law; and*
- (ii) *Report compliance within 45 days."*

2. The background of the matter is that the complaint had been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against failure of the Department to consider declaration of assets dated 31.07.2018 and issuance of verification letters to banks for confirmation of foreign remittance. The Complainant an individual filed return of income for Tax Year 2016 under Section 114(1) of the Income Tax Year 2016 under Section 114(1) of the Income Tax Ordinance, 2001 (the Ordinance). The return for Tax Year 2016 was subsequently, selected for audit under Section 214C read with Section 177(1) of the Ordinance, intimation whereof was issued to the Complainant vide letter dated 12.06.2018. According to the Authorized Representative (AR), the Complainant in the meanwhile, availed amnesty under Voluntary Declaration of Domestic Assets (VDA) Act 2018 and deposited tax amounting to Rs. 0.226 million vide CPR IT-20181731-1610-1263933 dated 31.07.2018. He submitted on the e-portal of FBR voluntary declaration of assets vide Form 'A' on 31.07.2018 showing following undisclosed assets:

- (i) *"Income amounting to Rs 4.526 million which includes;*
 - a) *undisclosed income (Rs. 4.300 million),*
 - b) *prize bonds, c) cash; and*
 - c) *foreign currency account (lump sum Rs. 0.226 (million)."*

3. The complainant alleged that despite his furnishing of bank certificates, regarding foreign remittances the Department (Deptt) while conducting the audit for Tax Year 2016, ignored to issue notices to the banks for verification. He contended that the Chief Commissioner-IR RTO Gujranwala as well as the Commissioner-IR (CIR) Zone-II were apprised of these facts but the Complainant failed to get any response.

4. When confronted under Section 10(1) of the Federal Tax Ombudsman Ordinance, read with Section 9(1) of Federal Ombudsmen Institutional Reforms Act 2013, the CIR Zone-II submitted parawise comments dated 09.10.2018 to the learned FTO. At the outset, preliminary objection regarding bar of jurisdiction under Section 9(2)(b) of the Federal Tax Ombudsman Ordinance was raised. On merits, it was contended that the Complainant had filed challans of tax paid in respect of voluntary declaration of assets under VDA Act 2018. However, the declaration of assets was neither available on FBR's e-portal nor was it furnished by the Complainant at the time of hearing. In the absence of copy of declaration of assets, FTO could not ascertain the position of assets. Thus notice dated 01.08.2018 was issued to the bank under Section 176 of the Ordinance with regard to confirmation of foreign remittance in the name of the Complainant. The Assessing Officer (AO) did not issue any illegal, harassing and torturing letter, but issued notice to the bank to further clarify the details of the remittances in view of the Section 111(4) of the Ordinance. Further, the Departmental Representative (DR) underscored that the Department had not committed any illegality by issuing letter to the bank to verify receipt of foreign remittances in terms of Section 111(4) of the Ordinance, as by that time declaration of assets was not accessible to the Assessing Officer (AO). The AR argued that declaration of assets filed by the Complainant under VDA Act, 2018 as per Form 'A' on 31.07.2018 was already on FBR's e-portal. He further argued that the Deptt is unnecessarily making correspondence with the bank. The DR on his part assured that the declaration filed by the Complainant on FBR's e-portal would be considered in the light of facts of the case and, as per law.

5. After due consideration, the aforementioned recommendations were made by the learned FTO. The representation has been filed by the FBR.

6. The hearing of the case has been held on 14.11.2019. Mr. Muhammad Ali ACIR and Mr. Ahmad Taimoor ACIR have represented the FBR. On the other hand, Ch. Qamar-uz-Zaman, Abdul Waheed Shakir and Mr. Gulbaz Qaiser, Advocates have appeared on behalf of the Complainant. Both sides have been afforded opportunity of hearing.

7. A thorough perusal of record and examination of all documents on record has been undertaken. The recommendations of the learned FTO are only to the extent to "(i) direct the Commissioner-IR, Zone-II Gujranwala to consider while finalizing the audit proceeding for tax year 2016, declaration of assets dated 31.07.2018 filed by the Complainant and available on FBR's e-portal, as per law; (ii) consider the foreign remittances over and above declared under VOA Act, 2018 in accordance with clarification issued by State Bank of Pakistan (Rs. 25.474 million) as per law within 45 days." The grievance of the complainant was "that the complainant has furnished proper bank certificate of scheduled bank i.e. Allied Bank Ltd Zia Plaza, Gujranwala as required under Section 111(4)(a) of the Income Tax Ordinance, 2001 (the Ordinance) regarding receipt of foreign remittances through Exchange Company of Dubai and ACIR Audit Unit-8 Zone, Gujranwala has un-necessarily issued notices to the bank for verification which amounts to harassment. As voluntarily declaration of domestic assets (VOA) was filed so other proceedings should have been dropped." It had not been duly adverted to by the Agency and the learned FTO ordered to reconsider the matter.

8. It is merely a reiteration of the authority of the Department to decide the matter as per law. The Agency has the lawful powers to decide the issue on its merits in accordance with the law. There is thus no justification to assail the orders of the learned FTO. In such circumstances, this representation is liable to be rejected.

9. Accordingly, Honourable President has been pleased to (a) reject the instant Representation of FBR-Agency and to (b) uphold the impugned recommendations of the learned FTO.

(Dr. Zulfiqar H. Awan)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

No.61/FTO/2019 dated 16.12.2019

Copy for information to:

1. Mr. Muhammad Ali s/o Mohammad Yousaf, R/o Gali No.3, Hameed Colony, G.T. road, Gujranwala.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Chief (Legal), Federal Board of Revenue, Islamabad
4. The Commissioner, Inland Revenue, Zone-II, Regional Tax Office, Gujranwala.
5. Sajjad Ahmad Butt, Advocate, ITP, Saeed Street Opp. Railway Station, Sialkot.
6. Master file.

(Dr. Zulfiqar H. Awan)
Director General (Legal)