

FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Karachi

Review Petition No. 47/2014

Dated 01.10.2014

in

Complaint No.733-K/2014

M/s. H.H Brothers,
Shop No.7, Pir Buksh Market,
Shah Alam Market,
Lahore.

... Petitioner

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Mr. Justice ® M. Nadir Khan, Advisor
Authorized Representative : Mr. Obaydullah Mirza
Departmental Representative : Mr. Rehmatullah Vistro, Deputy Collector

ORDER-IN-REVIEW

✓
The Petitioner (Complainant) feeling aggrieved by rejection of his complaint being hit by the bar of jurisdiction under Section 9(2)(a) of the FTO Ordinance and time barred in terms of Section 10(3) of the FTO Ordinance has invoked the provisions of Section 14(8) of the FTO Ordinance by filing of petition for review of the Findings/Recommendations alleging that the same are based on malafide and intellectual dishonesty. According to the Petitioner Findings/Recommendations are in derogation of earlier Findings/Recommendations and orders on representation under Section 32 of FTO Ordinance. The Petitioner has relied on orders passed by the Hon'ble President of Pakistan.

"Nos. C-485-K/2005, Order No.78/2007-law (FTO) dated 31.03.2007, F.No.51/05-law (FTO) dated 21.04.2007, 107/2007-97/2010, 111/KHI/ST(31)522/2010, 131/KHI/ST(61)/360/2012, 2013 PTD 1770, 2013 PTD 2341, 46/2011-law (FTO) dated 10.10.2013"

2. The Department (Deptt) resisted the review petition and filed para-wise comments supporting the Findings/Recommendations of the Federal Tax Ombudsman contending that the complaint was hit by bar of jurisdiction under Section 9(2)(a) of the FTO Ordinance as the matter was subjudice before the High Court of Sindh, Karachi in reference application filed against the order which was sought to be implemented. According to the Deptt, the complaint was also time barred.

3. The parties during hearing before the Federal Tax Ombudsman reiterated averments of their pleadings. The Complainant supporting his plea for implementation of the order of the Appellate Tribunal despite matter being subjudice before the High Court relied on the orders passed by the President on the Findings/Recommendations of the Federal Tax Ombudsman referred hereinabove and the order of the High Court of Sindh in CP No.D-4016/2013.

4. Submissions of the parties considered in the light of averments of their pleadings and the case law on the issue. It is observed that the Petitioner has neither disputed the fact that the complaint was filed after filing of reference application by the Deptt and that the same is pending before the High Court nor he denied the legal position about complaint being time barred as the same was filed after 03 years of arising of cause of action based on the order dated 08.04.2011 passed by the Appellate Tribunal. He has not advanced any reason which could be considered special circumstance to condone the delay.

5. Adverting to the case law relied by the Complainant about taking cognizance of similar matters by Federal Tax Ombudsman despite the same being subjudice, it would suffice to observe that the Hon'ble President of Pakistan in recent orders passed on representations filed against FTO Findings/Recommendations in matters being subjudice

or where remedy of appeal was available reversed the earlier review. For ready reference following orders are relevant:

1. No.203/2010-Law-(FTO) dated 18.07.2014
2. No. 85/2012- Law-(FTO) dated 26.03.2014
3. No. 75/2012- Law-(FTO) dated 26.03.2014
4. No.218/2010-Law-(FTO) dated 27.03.2014
5. No. 92/2009-Law-(FTO) dated 25.03.2014

6. The later decision of President nullifies the earlier decisions and later decisions are binding which leave no room for taking cognizance of complaint where the matter is subjudice as the same is hit by bar of jurisdiction under Section 9(2)(a) of the FTO Ordinance. The order dated 25.10.2013 passed by the High Court in CP No.D-4016/2013 is not relevant. The same was passed exercising constitutional jurisdiction whereas the Federal Tax Ombudsman exercise powers vested in him under FTO Ordinance read with FOIR Act, 2013 which bar the FTO to investigate or inquire into matters which are subjudice. The President in his recent orders applying the provisions of Section 9(2)(a) of the FTO Ordinance has rejected complaints filed in subjudice matters whereafter, there remain no cavil about legal position that complaint in a matter being subjudice before a competent forum is not maintainable.

7. In view of foregoing discussion the complaint being hit by bar of jurisdiction under Section 9(2)(a) of the FTO Ordinance and also being time barred under Section 10(3) of the FTO Ordinance was rightly rejected leaving no ground for review of rejection of the complaint.

8. The review petition having no merits is rejected and the file is consigned to record.

Muhammad Ehsan
Registrar
Federal Tax Ombudsman Secretariat
Islamabad.

(Abdur Rauf Chaudhry)
Federal Tax Ombudsman

Dated: 06-11-2014
my

Approved for reporting.
06/11/14.