

**PRESIDENT'S SECRETARIAT (PUBLIC)**  
**AIWAN-E-SADR**  
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Mr. Mansoor Majeed Ayat **VS** Federal Board of Revenue

**Subject: REPRESENTATION PREFERRED BY MR. MANSOOR MAJEED AYAT AGAINST REVIEW FINDINGS / RECOMMENDATIONS DATED 25.11.2021 PASSED BY THE LEARNED FTO IN REVIEW COMPLAINT NO. 3129/LHR/IT/2021**

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

2. This Representation has been filed by Mr. Mansoor Majeed Ayat on 21.12.2021 against the findings of the learned Federal Tax Ombudsman (FTO) dated 25.11.2021 passed in Review Petition (RP), whereby it has been held that:

*“the petitioner has failed to point out any error on the face of the record or discovery of some new fact, therefore, the RP having no merit, stands dismissed. Record of the RP be annexed with the complaint file.”*

The Hon'ble FTO vide Order-in-Original dated 28.01.2021 has been pleased to observe as under:

*“Evidently, the complainant has challenged the issuance of impugned SCN dated 02.10.2020. Legally, mere issuance of SCN could not be challenged as the complainant is required to file reply to the same with his defense and wait for some order. The Hon'ble Islamabad High Court, Islamabad in Writ Petition No.1238/2013 titled Auditor General of Pakistan etc. V. Federal Tax Ombudsman etc. has held that challenge to a show cause notice is, therefore, not different than filing a petition on the basis of an apprehension or a speculation. Such a petition is premature and not mature for adjudication. In this view of the matter, mere issuance of SCN does not constitute maladministration.*

*The complainant has failed to make out case of maladministration against the Deptt, therefore, the complaint stands dismissed. Case file be consigned to record.”*

3. Mr. Mansoor Majeed Ayat (the complainant) an individual deriving share income from an AOP property and profit on debit, filed return of income for Tax Year 2019 under Section 114(1) alongwith wealth statement under Section 116(1) of the Ordinance. The return was treated as an Assessment Order under Section 120(1)(b) of the Ordinance. The Deptt subjected the return for Tax Year 2019 under Sections 122(1) & 122(5) read with Section 122(9) of the Ordinance on the basis of a property situated in the UAE purchased on 16.01.2012 during the period relevant to Tax Year 2014. He averred that transactions relating to earlier years could not be taken up in the Tax Year 2019. 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. Without reference to the merits of the case, it may be noted that under Article 32 of the Establishment of the Wafaqi Mohtasib (Ombudsman) Order 1983 read with Section 14 of the Federal Ombudsmen Institutional Reforms Act 2013, any person aggrieved by an order of the Mohtasib may, within 30-days, file a representation before the Honourable President of Pakistan. The remedy of representation, being a Statutory remedy is available to an aggrieved person within the prescribed period of limitation i.e. 30-days.

5. It has been held by the Hon'ble Supreme Court of Pakistan in Federation of Pakistan through Secretary Revenue Division Vs Messrs Sahib Jee and others (PLD 2017 SC 139) that “when the Revenue Division or any person is aggrieved of a recommendation made by the Federal Tax Ombudsman in terms of S.11 of the Establishment of Office of Federal Tax Ombudsman Ordinance, 2000, it/he may file a representation to the President of Pakistan within 30 days of such recommendation. This remedy of representation, though not stricto sensu akin to an appeal, is nevertheless a statutory remedy and



*therefore, the provision must be strictly construed and applied, meaning thereby that a representation is only available to either the Revenue Division or any aggrieved person as against a recommendation of the Federal Tax Ombudsman within 30 days' time...If, whilst exercising the power of review, the Federal Tax Ombudsman sets aside his earlier decision, irrespective of whether it was a recommendation or not, and passes a new recommendation in the order of review, then this (new recommendation) shall have been passed pursuant to Section 11(1) ibid and a representation would be competent against it. Conversely, where a recommendation earlier made by the Federal Tax Ombudsman is not set aside while exercising the power of review, the order dismissing the review petition would not tantamount to a fresh recommendation in terms of Sections 11 & 32 of the Ordinance against which a representation could be competently filed."*

6. In the instant case, the impugned order on the complaint was passed by the learned Federal Tax Ombudsman against complainant on 28.01.2021, where against the Review Petition was also rejected by the learned Federal Tax Ombudsman on 25.11.2021. In terms of the decision of the Apex Court, no representation can be competent when the Original Order is maintained in Review by the learned Federal Tax Ombudsman. The representation qua the Original Order dated 28.01.2021 became time barred on expiry of 30 days limitation. It is, thus, liable to be rejected.

7. Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 is as follows:-

*"It shall not be necessary for the President or the Ombudsman to give personal hearing to the parties and the matter may be decided on the basis of available record and written comments filed by the Agency."*

The law thus empowers the decision of a representation on the basis of available record without personal hearing of the parties.

7. Accordingly, the Hon'ble President as per his decision above has been pleased to reject the representation of complainant as incompetent and time barred.

(Anwar-ul-Haq)  
Director General (Legal)

Mr. Mansoor Majeed Ayat,  
11/E-II, Main Gulberg,  
Lahore.

The Chairman,  
Federal Board of Revenue,  
**Islamabad.**

**No.138/FTO/2021 dated 13.07.2022**

Copy for information to:

- ✓ (1) The Registrar, Federal Tax Ombudsman, Islamabad.
- (2) The Chief (Legal-III), Federal Board of Revenue, Islamabad.
- (3) Mr. Muhammad Iqbal Hashmi, Advocate Supreme Court, Javed Hashmi Law Associates, 1/5-Turner Road, Lahore.
- (4) Master file.

(Anwar-ul-Haq)  
Director General (Legal)