

## **LHC rules: President's order against FTO is illegal, unlawful**

Lahore High Court (LHC) has ruled that President of Pakistan has passed a wholly illegal and unlawful order against Federal Tax Ombudsman (FTO) as representation filed by Federal Board of Revenue (FBR) was patently time-barred and as such could not have been entertained by the President. It is learnt that in a landmark order LHC observed that there is no doubt in the mind of this Court that President has passed a wholly illegal and unlawful order which is not sustainable in law and facts of the case.

Petition was moved by Muhammad Anwar, a taxpayer of Bahawalnagar, through Waheed Shahzad Butt, Advocate, challenging the acceptance of representation by the President against the order passed by FTO Chaudhary Abdur Rauf, stating that act of the President is patently illegal and ab initio void.

LHC order states "This writ petition seeks to challenge order dated 17-11-2016 passed by respondent No 1 (President of Pakistan) whereby the representation filed by respondents No 2 and 3 (FBR) was allowed and order dated 08-06-2016 passed by FTO was set aside. Facts of the case in brief are that the petitioner filed a complaint before the FTO against respondent No 3 for not proceeding with the case for income tax refund of the petitioner. After hearing the parties, the FTO passed order on the petitioner's complaint directing respondent No 3 to revisit his order passed under section 122(5A) of the Income Tax Ordinance, 2001. The petitioner also filed a review application before the FTO. Respondents filed representation against order dated 08-06-2016 which representation was allowed on 06-09-2016 by respondent No 1 hence this writ petition." Learned counsel for the petitioner submitted that the representation was patently time barred as section 32 of the Federal Tax Ombudsman Ordinance, 2000 stipulates that representation shall be filed within a period of thirty days from the date of passing of the order by the FTO.

LHC order further states "Learned counsel for the respondents, on the other hand, stated that the application for condonation of delay was filed with the representation and as such respondent No 1 was justified in passing the order impugned in this petition. The representation filed under section 32 of the FTO Ordinance 2000 along with the application for condonation of delay was filed on 06.09.2016. The only ground mentioned in the application seeking condonation of delay was that on account of transfer of the Commissioner and structural changes of jurisdiction by the FBR, the representation could not be filed in time. This ground alone does not constitute sufficient cause for condoning the delay. It is furthermore settled law that delay of each and every day has to be explained which was not done in this case. Respondent No 1 too without adverting to this vital aspect of the matter, set aside order. Even otherwise, respondents No 2 and 3 did not challenge the original order passed by the FTO, which, therefore, attained finality. Order dated 08-06-2016 passed by the FTO simply dismissed the review application. There was thus no occasion for respondents No 2 and 3 to challenge the said order by filing the representation. The perusal of the order passed by respondent No 1, however, shows that in the garb of hearing representation against order dated 08-06-2016, he set aside the findings of the FTO.

"There is, therefore, no doubt in the mind of this Court that respondent No 1 has passed a wholly illegal and unlawful order which is not sustainable in law and facts of the case. Representation filed by respondents was patently time-barred and as such could not have been entertained by respondent No 1 (President). Similarly, the findings of the FTO has attained finality for want of further challenge and, therefore, could not have been set aside by respondent No 1 while hearing representation against order dated 08-06-2016 through which the FTO simply dismissed the review application. In this view of the matter, this writ petition is allowed and order dated 17-11-2016 is set aside being without lawful authority and of no legal effect," LHC ordered.

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