

FBR stance on FTO authority dismissed by PHC DB

A division bench of the Peshawar High Court (PHC) has ruled that the Federal Tax Ombudsman (FTO) has jurisdiction and authority to entertain complaints of aggrieved taxpayers of Pakistan, while the Federal Board of Revenue's stance on the FTO's authority under Section 9(2) of the FTO Ordinance has been dismissed by the court.

Sources told *Business Recorder* that while dismissing an FBR's petition against the order of FTO, following questions framed by the FBR have been answered in favor of FTO: (i) that according to sub-section (2) of section 9 of the Ombudsman Ordinance, 2002, FTO had no authority to entertain complaint filed by the respondent; (ii) that the jurisdiction assumed by FTO on the complaint and recommendation and findings given and made in order dated 22.1.2013 are void, illegal without jurisdiction and have no legal effect and liable to be struck down; (iii) that the order/judgment is even not sustainable in the law and liable to be declared void.

When contacted tax lawyer Waheed Shahzad Butt told this correspondent that a dozen of petitions have been preferred by the aggrieved taxpayers of Pakistan, categorically questioning the working of office of President of Pakistan as Appellate Authority and FBR's functionaries to play with the precious resources of national exchequer (taxpayer's money) and wastage of taxpayer's money in futile litigation either by passing patently illegal orders or retaining taxpayer's money in shape of refunds and then defending it to save the skin of higher authorities at the cost of taxpayer's money. The President while performing functions as an appellate authority undoubtedly in various cases played a biased role and accepted the patently illegal FBR's representations so much so, earlier orders of binding nature issued by the predecessor in office of President have been ignored for some unknown reasons.

The PHC order states: "The chief commissioner, the petitioner in both the petitions seeks a common relief in terms that according to sub-section (2) of section 9 of the Ombudsman Ordinance, 2002, FTO had no authority to entertain complaint filed by the respondent. A complaint was filed before the worthy FTO under the enabling provisions of the establishment of the office of the FTO, Ordinance, 2000. The FTO made his recommendations on the complaint of the respondent-companies, in terms that:- FBR to get the audit conducted through the audit firm, as agreed to by both the parties previously, for fair and unbiased resolution of the issue within one month; issue refund/compensation due. FBR, feeling aggrieved by the recommendations, rendered by the FTO, impugned the same before the worthy President of Pakistan under Section 32 of the Ordinance of 2000, which was disposed of in terms that refund/compensation may be issued strictly as per law and as due. Feeling dissatisfied, the petitioners have invoked the constitutional jurisdiction of this court, seeking to annul the above decisions of the FTO and the worthy President of Pakistan, passed under the enabling provisions of the Ordinance of 2000.

The PHC order further states: "The principle settled by the apex court in "Muhammad Tariq Pirzada's case (1999 SCMR 2189), which was followed in "Akhlaq Cloth House's case (2008 PTD 965), Professor Dr Anwar's case (2006 SCMR 382), M/S Siddique Sons' case (2006 PTD 181) and Raza Facto Tractor's case (2015 PTD 438) clearly laid down that:- a decision of the worthy President passed as an appellate authority under Ordinance of 2000 is a quasi judicial

order and not an executive or administrative order passed by the worthy President under the Constitution. Decision of the worthy President of Pakistan has to fulfill all legal attributes of a lawful order and that the said quasi judicial order of the President being justice-able is subject to judicial review.

Impugned decisions of the Federal Tax Ombudsman and the worthy President were, thus, *intra vires*. Ordinarily, any amendment introduced in law would have prospective effect, unless the amendment expressly provides for it to have retrospective effect. The issue relating to retrospectivity of amendment in procedural law has been well settled. In the instant case, the issue is not purely procedural; but it affects the substantive rights that had not only accrued but matured into vested rights in favor of the respondent-companies, as special audit had been ordered by the worthy FTO. In such circumstances, any procedural change, if it is detrimental to the rights of the respondent-companies, cannot be retrospectively applied to their cases.

Accordingly, for the reasons stated hereinabove, this court declares and holds that the decision of the worthy President passed as an appellate authority under Ordinance of 2000 is a quasi judicial order and not an executive or administrative order passed by the worthy President under the Constitution, which requires fulfilling legal attributes of a lawful order. Impugned decisions of the Federal Tax Ombudsman and the worthy President were, thus, *intra vires*. Both these writ petitions are dismissed, the PHC Ordered.

Copyright Business Recorder, 2018